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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

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NEIL GAIMAN and
MARVELS AND MIRACLES, LLC,

Plaintiffs,

-vs-

03-1461

Case No. 02-C-0048-S

TODD McFARLANE,
TODD McFARLANE PRODUCTIONS,
INC., TMP INTERNATIONAL, INC.,
McFARLANE WORLDWIDE, INC., and
IMAGE COMICS, INC.,

Defendants.

=====

Telephone Deposition of:

JULAINIE CLAYBAUGH

=====

U.S.C.A.—2d Circuit
FILED

NOV 23 2003 JC

GINO J. AGNELLO
CLERK
Date: Wednesday, July 17, 2002
Time: 2:05 o'clock p.m.
DOC. # _____

Reported by ELIZABETH J. KERNEN

1 TELEPHONE DEPOSITION of JULAINE CLAYBAUGH,
2 a witness of lawful age, taken on behalf of the plaintiffs
3 in the above-entitled cause, wherein Neil Gaiman, et al.
4 are the plaintiffs and Todd McFarlane, et al. are the
5 defendants, pending in the District Court of the
6 United States for the Western District of Wisconsin, before
7 ELIZABETH J. KERNEN, a Notary Public in and for the State
8 of Wisconsin, at the offices of Foley & Lardner, Attorneys
9 at Law, 150 East Gilman Street, Madison, Wisconsin, on
10 July 17, 2002, commencing at 2:05 o'clock p.m.

11 A P P E A R A N C E S

12 JEFFREY A. SIMMONS,
13 FOLEY & LARDNER, Attorneys at Law,
14 150 East Gilman Street, Madison, Wisconsin,
appearing on behalf of the plaintiffs;

15 EUGENIA G. CARTER and
16 GABRIEL S. GROSS, (By telephone)
17 LaFOLLETTE, GODFREY & KAHN, Attorneys at Law,
One East Main Street, Madison, Wisconsin,
appearing on behalf of the defendants;

18 MATTHEW LAPPLE, (By telephone)
19 BROBECK, PHLEGER & HARRISON, LLP,
20 Attorneys at Law, 38 Technology Drive,
Irvine, California, appearing on behalf of
the defendant Image Comics, Inc.;

21 MICHAEL KAHN, (By telephone)
22 BLACKWELL SANDERS, LLP, Attorneys at Law,
23 720 Olive Street, St. Louis, Missouri,
appearing on behalf of the witness.

24 ALSO PRESENT: GREGOR E. NIGH
25 JAMES P. CAVEN
JOHN SCHAAK

1 JULAINE CLAYBAUGH,
2 called as a witness, after being first
3 duly sworn in the above cause, testified
4 under oath as follows:

5 EXAMINATION

6 BY MR. SIMMONS:

7 Q Ms. Claybaugh, my name is Jeff Simmons. I'm the
8 attorney for Neil Gaiman and Marvels and Miracles, LLC,
9 and I'm going to be taking your deposition today. Have
10 you ever given a deposition before?

11 A Yes, sir.

12 Q What was that; what case was that for?

13 A It was revolving around a former employee -- or a former
14 employer. It was many years ago.

15 Q Were you -- are you on a speaker phone? I'm having a
16 little bit of trouble hearing you.

17 A I'll try speaking up. I am on a speaker phone.

18 Q We'll see how it works. It's still pretty muffled.

19 A Okay.

20 Q Were you a plaintiff or a defendant in that case?

21 A I was a witness in the case.

22 Q Any other times you have given a deposition?

23 A No, sir.

24 Q I'll just explain a little bit to you. This is a little
25 bit odd because we're on the telephone, but the main

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1 points, I'm just here to ask you a series of questions,
2 and our goal is to try to create as clean a record as
3 possible for the court reporter, who is in my office
4 over here busily taking down everything we're saying.
5 So just speak up as much as you can so she can
6 accurately hear what you're saying. And I think we
7 should just try not to speak over each other.

8 When I ask you a question, just try to -- you may
9 anticipate what I'm going to ask you, but just let me
10 finish my question so that the court reporter can get
11 the whole question down, and then I'll try to do the
12 same for you, let you finish your answer. And we should
13 also -- your attorney may want to object to some of the
14 questions that I ask, so you may just want to be
15 conscious of that and try to give him an opportunity to
16 do that if he chooses to object, again just so that the
17 court reporter can make sure she's getting everything
18 down.

19 If I ask you a confusing question or a question
20 that just doesn't make any sense to you, feel free to
21 ask me to restate the question or rephrase it. Let me
22 know you don't understand because otherwise if I ask you
23 a question and you answer it I'm going to assume that
24 you understood the question. Does that make sense to
25 you?

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1 A Yes, sir.

2 Q And if at any time you need to take a break, just let us
3 know and we can do that. If you want to get a drink or
4 use the restroom or something, that's fine.

5 Did you receive a packet of exhibits that was sent
6 out to you?

7 A Yes, I received two packets.

8 Q I'm sorry, yes, two packets. And do you have those
9 exhibits with you right now?

10 A Yes, I do.

11 Q Okay. And do you have Exhibits -- the exhibits should
12 start at No. 59 and end at 119.

13 A 120.

14 Q Excuse me, 120, you're right. And has your attorney --
15 I don't want to know what you have said to your
16 attorney, I just want to know, have you seen the list of
17 topics to be discussed at these depositions?

18 A No, I have not.

19 MR. SIMMONS: Okay. Mike, do you
20 know which topic she is a designee on?

21 MR. KAHN: Here is how we would
22 designate Julaine. She has been the person for
23 both -- for all of the McFarlane entities who is
24 being charged with the responsibility for finding
25 and compiling all documentary evidence concerning

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1 the various matters that are addressed and the
2 deposition designation of topics on at least two
3 30(b)(6) deposition notices that you sent out. She
4 has, as you will hear, personal knowledge of some
5 of them because she generated those reports or
6 created those documents and others she simply has
7 gathered them. So we will designate her initially
8 to at least try to testify about the documents and
9 as much information as she is able to in light of
10 the fact that she's only been with the company for
11 a year.

12 Areas that she will not have firsthand
13 knowledge of we will probably need to then have
14 Todd McFarlane address because he will be probably
15 the person at the company these days with the most
16 knowledge of those topics.

17 The other potential person out there is no
18 longer an employee, the former CFO, Allan Inglis,
19 and we may need to get some additional information
20 from Allan. But for the moment we're going to
21 tentatively at least designate Julaine Claybaugh as
22 the person to testify about each of these topics
23 with the explanation I have just given you with
24 Todd McFarlane as her backup of things she may not
25 have firsthand knowledge of.

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1 MR. SIMMONS: Okay. Very good.

2 Q Ms. Claybaugh, what exactly is your title, what's your
3 job title?

4 A Accountant and royalty administrator.

5 Q And who is your employer?

6 A TMP International.

7 Q Do you hold any titles with Todd McFarlane Productions?

8 A No.

9 Q I'll just kind of start looking through the exhibits
10 with you, so if you want to put those in front of you.
11 Do you have them handy?

12 A Yes, sir.

13 Q I'm just going to start with Exhibit 59, and that's for
14 the benefit of everybody else Bates TM 1523, and the
15 document I have in front of me, the title at the top is
16 "Character Comic Appearances & Toy Productions." Is
17 that the document you have in front of you?

18 A Yes, sir.

19 Q Do you recognize this document?

20 A Yes, I do.

21 Q Is this a document you compiled?

22 A Yes, it is.

23 Q Can you just tell me, describe for me the document, what
24 it is and what information it contains.

25 A Basically it gives the appearances of any of the subject

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1 characters and which issues of the comics that they
2 appear in.

3 (Discussion off the record)

4 Q Do you know the question?

5 A Yes. Basically what this is is a listing of the
6 different characters that are in question and what
7 issues of comic books that they appeared in and also a
8 listing of any toys that were produced that relate to
9 the characters.

10 Q And how did you obtain the information that's contained
11 on the document?

12 A Through different databases here in the office. The
13 comics, we have a database of all the comics that we
14 have produced and what characters appear in any of those
15 comics. For the toys, I accessed our general software
16 that we use for all accounting inventory, shipping
17 purposes, access the database there and compile all the
18 information.

19 Q And how far back in time does that database go in terms
20 of the information it contains?

21 A On the current software that we are using here it goes
22 back into the area of 1999.

23 Q Now, on Exhibit 59 it lists a bunch of comic book
24 issues, and some of these issues I recognize as having
25 been written prior to 1999, Spawn 9, for example, or

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1 Spawn 26.

2 A Okay. I guess I should clarify that a little better.

3 The comic book database is complete, whereas the
4 accounting side of it, which would contain all the toy
5 information, goes back to 1999.

6 Q Okay.

7 A I also used our price list that we produced in order to
8 verify the existence of some of these toys, and those
9 price lists do go back to the very beginning.

10 Q The very beginning is what date?

11 A I would say it's 1995.

12 Q Okay. Somewhere in that time frame?

13 A Yes. I don't have those documents in front of me, so I
14 can't verify that.

15 Q Okay. Do you know, is there one person who actually
16 compiled that database that you're accessing and I
17 should say enter the information into that database?

18 A To be honest with you, I would imagine that it was more
19 than one person, but I don't know the answer to that
20 question.

21 Q Okay. And I think you mentioned some price lists. Is
22 it your understanding that you have produced copies of
23 the price lists to us already, did I hear you properly?

24 A I don't recall if I have given you copies of the price
25 lists or not. I'm sorry.

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1 Q Is a price list something you can generate from that
2 database, though?

3 A The price lists are hard copies that I have. They are
4 not something that is in the database as far as being a
5 specific document.

6 Q Okay. How voluminous are the price lists?

7 A I'm sorry.

8 Q How many pages would you say, if you produced all the
9 price lists to us for all the various products that you
10 sell, how many documents do you think you're talking
11 about roughly?

12 A It could probably be anywhere from 25 to 50 sheets.

13 MR. SIMMONS: Okay. Mike, I don't
14 think we have seen those documents, so if we could
15 get copies of those produced to us, that would be
16 helpful.

17 MR. KAHN: I can put that in writing
18 to you as well.

19 MR. SIMMONS: That's just something
20 we should get a look at.

21 MR. KAHN: I will make a note in my
22 margin and we can get those copied.

23 Q Ms. Claybaugh, in terms of the comic book issues that
24 are listed on Exhibit 59, I looked at some other comic
25 books that were produced by Image Comics, and I'll just

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1 represent to you in their production to us they included
2 some comic books that at least included the Angela
3 character and I think the Medieval Spawn character as
4 well that are not on this list. For example, I think
5 there is several comic books with the Angela character
6 and then a Glory character and there are also I think a
7 few where Medieval Spawn is teamed up with the Witch
8 Blade character.

9 And I'm just wondering, are you familiar with
10 those, with any comic books, any of those type of comic
11 books that I have mentioned?

12 A No, sir, I'm not.

13 Q Okay. I think those comic books may be examples where
14 Todd McFarlane Productions has teamed up with some other
15 comic book producer and they have sort of shared
16 characters between them. Do you know, are you aware of
17 any instances where that's happened with Todd McFarlane
18 Productions' characters?

19 A Where we have teamed up with other producers?

20 Q Yeah.

21 A I don't know firsthand, no, I sure don't.

22 Q Okay. So to your knowledge, if any of Todd McFarlane
23 Productions' characters were sort of loaned out to
24 another comic book publisher for use in another series
25 of comics not produced by Todd McFarlane Productions, do

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1 you know whether that comic would show up in your
2 database of comic books and comic book characters?

3 A I can't answer that question. I don't know if it would
4 or wouldn't.

5 Q Do you know who might know at either Todd McFarlane
6 Productions or TMP International?

7 A I think probably Todd might know.

8 Q Okay. I'm going to turn now to the next exhibit,
9 Exhibit 60. Do you have that in front of you?

10 A Yes, sir.

11 Q And for everybody else, it's Bates Nos. TM 1572 through
12 1576. Do you recognize this document?

13 A Yes, sir.

14 Q Can you tell me what it is.

15 A This is a report that was printed out of the company
16 titled "McFarlane Toys, Inc." regarding several
17 different toys, and it gives all the sales figures,
18 including the quantities and the sales dollars for the
19 entire period of time that we were using this particular
20 software. It would go back to the very beginning and it
21 brought the numbers forward up until the day that I
22 actually ran the report, which was on June 5th, 2002.

23 Q You said it goes back to the beginning. By the
24 beginning, do you mean when you first started using this
25 computer program?

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1 A Yes, the computer program, which would be approximately
2 1999.

3 Q Okay. So this information -- so these reports won't
4 include data for sales prior to whenever in 1999 it was
5 that you started using the computer program, is that
6 correct?

7 A That is correct.

8 Q And is this document, is this generated from the same
9 database you were referring to before with regard to
10 Exhibit 59?

11 A Yes.

12 Q Same computer program basically?

13 A Yes.

14 Q This is a report for Todd McFarlane Toys, Inc. Is
15 that -- where is Todd McFarlane Toys, Inc. located?

16 A Are you meaning like the offices?

17 Q Yeah. Do they have a separate office somewhere?

18 A No. All the companies are all -- all the records for
19 all the companies are here in this office where I am
20 right now.

21 Q Okay. Do you know, Todd McFarlane Toys, Todd McFarlane
22 Toys, Inc., is that another name for TMP International?
23 Let me rephrase that. Todd McFarlane -- TMP
24 International primarily sells toys, is that correct?

25 A Well, my interpretation would be that TMP International

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1 is like the parent company, where McFarlane Toys, Inc.
2 is the company that all domestic sales of toys are
3 produced through McFarlane Toys, Inc.

4 Q Okay. I think you're getting at what I want. Yeah.
5 When I see a report, when I see Exhibit 60 and it says
6 McFarlane Toys, Inc. inventory sales report, is that
7 sales of toys within the U.S. then?

8 A Correct. There will never be a report that says TMP
9 International that covers any kind of sales. We don't
10 run sales through that company.

11 Q Okay. So looking at the first page of Exhibit 60, just
12 looking at the columns on the right-hand side of the
13 page, I notice they all list zeros, they have dollar
14 amounts and the dollar amounts are all zeros. Do you
15 see that?

16 A Yes.

17 Q Can you explain to me why there are zeros in those
18 columns.

19 A Because the customers were not charged for the
20 individual toys, they were sample sales and replacements
21 and there were no charges.

22 Q Okay. Looking at the first line, the first entry I
23 guess on page 1, there is a listing for Weichert
24 Realtors. Do you see that?

25 A Yes, sir.

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1 Q And it says to the left of that name cash sales.

2 A Yes, sir.

3 Q I'm just wondering, I'm wondering why it says cash sales
4 and then there is no dollar amount listed to the right.

5 Do you have any idea why that would be?

6 A Yes, if you look above that, those words cash sales, you
7 will see that it says customer ID. That is simply an ID
8 number that they used in order to process the
9 transaction itself in order for inventory to be
10 released.

11 Q And when you say it's a phrase that they used, who is
12 they? Who is it that would have entered into that, who
13 would have used that term cash sales?

14 A Cash sales is a customer ID that would -- if it is set
15 up within our system, that simply -- well, whoever
16 processed this order back in 1999 used that customer ID
17 and then put in the customer's actual name so that it
18 could be tracked at a later time, but there was actually
19 no charge for the sale. Therefore, the 11 pieces that
20 were given to this Weichert Realtors, there was an
21 inventory adjustment to lessen the inventory by those 11
22 pieces.

23 Q Okay. So is it true then if -- there are a number of
24 these reports for different companies and different
25 products. If we see the term, if I see the term cash

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1 sales in the customer ID column on some of these other
2 reports, is it possible that there may or may not be
3 dollar figures associated with them? Did that make
4 sense?

5 A That is correct. It could go either way, yes.

6 Q And also, just looking right above the first entry right
7 above the Weichert Realtors entry and below the location
8 code, there is a reference to Spawn Ultra, and I guess
9 that's assortment one. Do you see where I'm referring
10 to?

11 A Yes.

12 Q Can you tell me what that refers to.

13 A It refers to that particular line of toys which is item
14 No. 10110, which is to the left of that name and it is
15 an assortment of toys.

16 Q Okay. So you said it's an assortment of toys. Is it
17 several action figures that are sold as one unit or is
18 it something else?

19 A Yes, it is several action figures that are sold as one
20 unit.

21 Q Okay. They come in one package when a person buys them?

22 A Yes, sir.

23 Q Just going down and again right below the Weichert
24 Realtors entry there is an entry for replacements.

25 A Yes.

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1 Q Do you see that?

2 A Yes.

3 Q Can you just explain to me how you define replacements.

4 A Well, I can tell you how I would define replacements. I
5 don't know if it would be the same as what they would
6 define it when whoever it was that entered this.

7 Q That's a fair point. What's your understanding of what
8 the term replacements means on this entry?

9 A My interpretation would be that a product had been
10 damaged and returned to us and therefore we replaced
11 that item at no charge, but we needed to enter it
12 through our system in order for inventory to be adjusted
13 properly.

14 Q Okay. You don't know that for sure, that's just an
15 assumption you're making?

16 A Yes, sir.

17 MR. KAHN: Jeff, this is Mike Kahn,
18 if I can interrupt.

19 MR. SIMMONS: You simply may.

20 MR. KAHN: I just want to make sure
21 that we're all clear on this point, so I will ask
22 the question that I don't know the answer to, but
23 it's my understanding on, for example, Spawn Ultra
24 assortment No. 1 that several different toys are
25 packaged in a box together but that when you open

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1 the box there may be individual toys in them, and I
2 just want to make sure there is no confusion over
3 that. I'm not sure, for example, it says quantity
4 invoiced 11, I don't know if that's 11 boxes, if
5 that's 11 toys, if it's an assortment of 11 toys.
6 We may want to just take this opportunity to let
7 Julaine know that, and she may not, at least to get
8 that clarified early on.

9 Q Julaine, can you either confirm or correct what Mike
10 just said?

11 A The quantity invoiced is going to be individual toys,
12 not cases of toys.

13 Q But again what Mike I think was saying is, you know,
14 these may come in a box and they may contain like five
15 separate action figures, and then the action figures
16 themselves might be sold separately by the retailer. I
17 think that's what Mike was suggesting. Is that an
18 accurate description of what we're seeing on this sheet
19 here?

20 A Yes, it is.

21 Q Okay. So when looking at again taking the Weichert
22 Realtors entry, for example, where it says quantity
23 invoiced 11, is that going to be 11 individual action
24 figures or 11 boxes that contain some other number of
25 action figures within them?

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1 A That is going to be 11 action figures.

2 Q Eleven individual items, 11 individual figures?

3 A Yes, sir.

4 (Discussion off the record)

5 Q In looking up towards the upper left-hand corner of the
6 first page of Exhibit 60, there is an entry that says
7 item number?

8 A Yes, sir.

9 Q Can you see that and it says 10110.

10 A Yes, sir.

11 Q And I'm just wondering, does that -- turning your
12 attention back to Exhibit 59, I don't see 10110 anywhere
13 on Exhibit 59, and I'm just wondering, I'm wondering if
14 the information on Exhibit 60 correlates somehow to any
15 of the information I'm seeing on Exhibit 59.

16 A Yes, it does. If you look on Exhibit 59 under Angela
17 under the title of toys, the first one that is on there
18 refers to Spawn Series No. 1. The specific item number
19 for the Angela toy in that series is 10113. That is a
20 part of the assortment that is called 10110.

21 Q Okay. And so we're turning to the question I asked just
22 a couple of minutes ago and that Mike was talking about,
23 so hypothetically looking at the first page of
24 Exhibit 60 again where it says quantity invoiced 11 --

25 A Yes.

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1 Q -- it could conceivably be 11 Angela figures, is that
2 right? I'm not saying it was in this case, but
3 theoretically it could be?

4 A No. If somebody was ordering and purchasing Angela
5 specifically, it would show up on the report as item
6 No. 10113.

7 Q Okay.

8 A These sales specifically refer to the assortment, which
9 is going to contain Angela but also contain several
10 other toys.

11 Q Okay. And again that will be -- using the Weichert
12 Realtors line as an example, that will be 11 toys total?

13 A Yes, sir.

14 Q Just turning to the second page of Exhibit 60, are you
15 there?

16 A Yes, sir.

17 Q Okay. Can you explain to me -- well, what's this page
18 showing me?

19 A It's basically the exact same report as the first page.
20 It is only on the Spawn Ultra assortment No. 2, which is
21 item number 10120.

22 Q And what does that assortment consist of?

23 A Are you asking me for the names of toys?

24 Q Sure, if you know them. Do you know --

25 A I don't have that list with me. I'm sorry. And I don't

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1 know that off the top of my head.

2 Q Sure. That's fine. Is there somewhere you could get
3 that information?

4 A Certainly.

5 Q Okay. And do you know, you may not know the answer to
6 this either, but I'm just wondering what the difference
7 is between the Spawn Ultra assortment No. 1 that's on
8 page 1 of Exhibit 60 and Spawn Ultra assortment No. 2 on
9 page 2. I assume -- do you have any idea what the
10 difference is?

11 A Actually, no, other than that the names of the toys are
12 going to be completely different. I notice that the
13 individual Angela toy that is in the assortment No. 2 is
14 called Cosmic Angela. It's very possible that it will
15 be Cosmic Spawn and cosmic whatever else is included in
16 the assortment.

17 Q Sure. Okay. But there are some documents that will
18 tell us what those assortments consist of?

19 A Yes, sir. The price lists will be specific as to the
20 names of the toys that make up all the assortments.

21 Q Good. So we have requested those already. Turning to
22 page 3 of Exhibit 60, are you there?

23 A Yes, sir.

24 Q Okay. I'm just on page 3. There is kind of a mixture
25 of entries, some of which have dollar figures, some of

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1 which don't. Can you tell me why some of them don't
2 have any dollar figures associated with them and others
3 do.

4 A Again I cannot attest to what took place back in 1999
5 because I was not here, but I have my own
6 interpretation.

7 Q Just based on your experience dealing with these
8 documents, correct?

9 A Yes.

10 Q Yeah, just tell me what you know based on your
11 experience.

12 A Based on my experience, what I am looking at is
13 replacement toys for damaged toys that were returned to
14 us, sample sales that went out, promotionals that went
15 out and then, of course, actual sales to places like
16 Kay-Bee Toys.

17 Q Okay. And all the items listed on page 3 of Exhibit 60
18 are for, the upper left-hand corner it says, Manga Spawn
19 assortment No. 1, is that right?

20 A Yes, sir.

21 Q And so now looking at the unit price column of that
22 sheet, do you see where that is, the third from the
23 right?

24 A Yes, sir.

25 Q I'm just noticing that the unit prices seem to vary

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1 between customers, and I'm wondering based on your
2 experience if you know why that might be.

3 A I have absolutely no idea on that.

4 Q Okay. Have you -- well, strike that. Do you know who
5 might know?

6 A Actually, I couldn't answer that because I don't know
7 who would be in charge of that back in this time frame.

8 Q Okay. That's fine. Turning to page 4 of Exhibit 60 --

9 A So you're referring to TM 1575?

10 Q Yeah. I should do that. Towards the middle of the page
11 it says Manga Spawn assortment one repaint?

12 A Yes, sir.

13 Q Can you tell me what that is.

14 A That means that the assortment was painted in a
15 different way than the original assortment and reissued
16 as an assorted line of toys.

17 Q And I'm turning back to Exhibit No. 59. I only see one
18 reference to a repaint on Exhibit 59. Under Cogliostro
19 it says Count Cogliostro repaint?

20 A Yes, sir.

21 Q So is it your understanding that there are no repaint
22 figures that include Angela or Medieval Spawn?

23 A That's not my understanding at all. When I compiled
24 what you have got here as Exhibit No. 59, on any items
25 that were on here, if there was a repaint, I simply

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1 included them with the original item number.

2 Q Okay. So why does Cogliostro show up separately, if you
3 know?

4 A Because that was a club exclusive and it was the only
5 one that I found. I actually did not find an item that
6 was the original toy prior to the repaint. Item No.
7 00013 must have been used throughout the entire sales of
8 that item and at some point in time somebody changed the
9 name to repaint, but that is my interpretation.

10 Q Okay. You're just trying to come up with an explanation
11 that makes the most sense to you based on what you know
12 about the records?

13 A Yes, sir.

14 Q Okay. I'll turn to Exhibit 61 now. Do you have that in
15 front of you?

16 A Yes, sir.

17 Q At the top of the document it says McFarlane Worldwide,
18 Inc., is that right?

19 A Yes, sir.

20 Q Can you explain to me what this document is.

21 A It's the exact same type of document as in Exhibit
22 No. 60. It's an inventory sales report. It is simply
23 run out from a different company, which is Worldwide,
24 Inc., which covers all of our international sales.

25 Q Okay. So if I'm looking at the first three pages of

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1 Exhibit 61, those all refer to McFarlane Worldwide, Inc.
2 Is this just telling me that McFarlane Worldwide, Inc.
3 has never made any sales of the characters identified on
4 these pages during --

5 A That is correct.

6 Q At least during the time period that this database was
7 maintained, correct?

8 A That is correct.

9 Q Then on page 4 of Exhibit 61, which is TM 1580 --

10 A Yes.

11 Q -- there begins three pages referring to McFarlane Toys
12 Collectors Club. Is this showing me what the sales were
13 for the McFarlane Toys Collectors Club or I guess it's
14 showing me that there were no sales for the McFarlane
15 Toys Collectors Club?

16 A For these specific items, that is correct.

17 Q Okay. And how did you -- can you just explain to me how
18 you went about running these reports that we're looking
19 at. Did you run a search for every single character for
20 sales of every single character or action figure for
21 each individual company?

22 A Yes, that's what I did. Yes, I would go into the
23 system, go into the specific area that covers the
24 inventory sales report. I would put in whatever
25 parameters that I felt needed to be put in there. As

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1 you can see from the left-hand side of it, I did not put
2 any date parameters in there because I wanted it to tell
3 me everything. I did not put any document number
4 parameters because I wanted every document. The only
5 parameters I put in on this specific item that we're
6 looking at was the item number because, you know, I
7 didn't want to run 60,000 pages.

8 Q Sure.

9 A So I just wanted to know on this particular item what
10 were our sales, so I printed off the report even though
11 it showed no sales because that at least gives me that
12 information.

13 Q Sure. Turning to Exhibit 62, do you have Exhibit 62 in
14 front of you?

15 A Yes, sir.

16 Q What is Exhibit 62? What's this information here
17 telling us?

18 A This again is an inventory sales report printed out of
19 the McFarlane Toys Collectors Club, and it is for a
20 specific item, which is item No. 10126, which is Cosmic
21 Angela, which again that is part of the assortment that
22 would have been numbered 10120.

23 Q Okay. And do you know why there are no dollar figures
24 associated with all these entries?

25 A No, I do not.

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1 Q Give me an understanding of how sales are made through
2 the McFarlane Toys Collectors Club.

3 A I'm sorry, could you repeat that question.

4 Q I guess I'm just wondering how the McFarlane Toys
5 Collectors Club works. Do people pay a fee to join the
6 club and then they get a certain number of toys or does
7 the club just give away toys, do you know?

8 A Well, to be honest with you, I could tell you how the
9 collectors club today is run. I don't know that it was
10 run the same way back in this era. I know it was a much
11 larger entity back in this time. But no, we don't have
12 a fee -- at this present time we don't work that way.
13 It doesn't -- you don't join the club and then get so
14 many free toys. You still have to buy toys. There is
15 no fee for joining the club.

16 Q So turning back to Exhibit 62, is it possible that
17 Exhibit 62, the transactions that it's showing are just
18 toys that have been given away to people during that
19 time period back in 1999?

20 A Yes, sir, that's exactly how I would interpret it. It
21 could have been some sort of a contest. There could be
22 many different explanations, but again I don't know for
23 a fact what reasons there were no charge.

24 Q Sure. Turn to Exhibit 63.

25 A Okay.

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1 Q Can you just tell me what Exhibit 63, what the
2 information in Exhibit 63 contains.

3 A This is a slightly different report than the other
4 reports that I ran off, and to be honest with you, I
5 don't know why I switched reports.

6 Q Okay.

7 A But this shows me that there were 125 pieces of the
8 Rainbow Angela that were sold and it gives me the total
9 dollar amount of the sales. What it does not give me is
10 the detail because it was run out of the summary report.

11 The only difference between a sales document
12 analysis report and an inventory sales report is that on
13 an inventory sales report it will give me specific dates
14 of specific sales. It will also give me invoice
15 numbers. On a sales document analysis report, it does
16 not give me those two things. It doesn't give me the
17 date of the invoice or the invoice number, but it gives
18 me the same information otherwise.

19 Q Gives you total sales and the total amount of money that
20 came in for those sales, right?

21 A Correct, for whatever time frame or, you know, item
22 numbers that I tell it to give me.

23 Q Okay. And so on Exhibit 63 with regard to the time
24 frame, I don't see any date listed on here. Is the time
25 frame from the time when this database was started until

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1 the present?

2 A Until the date of the report, yes.

3 Q Yes. Yes. Okay. Turning to Exhibit 64 --

4 A Yes, sir.

5 Q -- looks like this may be similar to one of the
6 documents we looked at before. Can you just explain to
7 me what Exhibit 64 is.

8 A Again it's an inventory sales report covering the
9 assortment called Manga Spawn Series No. 1 from the
10 collectors club.

11 Q And so this report is just telling me that the toy
12 collectors club didn't make any sales of Manga Spawn
13 Series No. 1?

14 A Of the assortment, that's correct.

15 Q Okay. Turning to Exhibit 65, I think these are going to
16 start going a lot quicker now, tell me what Exhibit 65
17 is.

18 A Again this is another inventory sales report run for the
19 collectors club covering item No. 60103, which is
20 specifically the 13-inch Angela toy figure.

21 Q Okay. And there are a couple of entries that differ
22 from the majority of the entries here. About two-thirds
23 of the way down the page there are two entries for
24 McFarlane Toys.

25 A Yes.

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1 Q Do you see those?

2 A Yes, sir.

3 Q And the unit price listed is \$5.25?

4 A Yes, sir.

5 Q Whereas the majority of the other ones I guess look like
6 they're \$22.50. Can you, if you know, explain to me
7 what transaction is being reflected in those McFarlane
8 Toys entries.

9 A I really can't verify exactly. I can only tell you my
10 interpretation of what I'm looking at.

11 Q Sure, if you can just give me that, that would be fine.

12 A Because this is a collectors club report and it's to
13 McFarlane Toys, I would interpret this as being simply a
14 transfer of inventory from one company to the other, so
15 that if the sales of these toys out of McFarlane Toys
16 occurred, it's going to show up on their report as the
17 end sale to the retailer.

18 Q And you're saying in this case you're just sort of
19 speculating. Have you seen entries like that before
20 where you know that it's -- where you know for a fact
21 that that sort of transfer has taken place?

22 A Unfortunately, yes.

23 Q Why do you say unfortunately?

24 A Because that's not the correct way of doing it, but, you
25 know, I have seen it done this way in past documents.

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1 Q What's the correct way to do it?

2 A A simple journal entry transferring, transferring
3 inventory from one company to another so that it cannot
4 process through these reports and have situations like
5 double royalties paid if it shows up on collectors club
6 and a royalty is paid on it there and it is transferred
7 into toys and sold out of toys and have a royalty paid
8 on it there again.

9 Q So do you supervise the entry of this data into this
10 database currently?

11 A No, I do not.

12 Q Okay. I guess I'm just wondering to the extent there
13 are any sort of internal rules about how this data is to
14 be entered, do you have any -- do you help write those
15 rules or tell people how things should properly be
16 entered into this database now?

17 A Yes, I do, only because I oversee all of the royalty
18 processing and it's very important that things are
19 processed correctly so that they show up on the reports
20 properly so that I have good documentation.

21 Q So is it your understanding that in general people do
22 enter those transfers between McFarlane companies in
23 what you would consider to be the correct manner or do
24 you not know?

25 A I would say for the past year as far as how long I have

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1 been with the company that yes, it is being entered
2 correctly.

3 Q Okay. And I don't know if I asked you this before or
4 not. McFarlane Toys Collectors Club, is that a separate
5 corporation or separate company from TMP International?
6 I guess I'm wondering what's its relationship to TMP
7 International.

8 A Yes, it is a separate company, a separate corporation.

9 Q Okay. Turning to Exhibit 66 --

10 A Yes, sir.

11 Q -- do you have that? Okay.

12 MR. KAHN: Jeff, just for your own
13 information, all sales would be ultimately
14 collected under for the purpose of this lawsuit TMP
15 International. The collectors club, whether it
16 continues to exist as a separate entity or not,
17 McFarlane Toys, which has become, although there
18 may be a separate entity, it's treated as d/b/a of
19 TMP International. If you're concerned that you
20 might be missing sales through this, you will not
21 be. They will all be collected under TMP
22 International.

23 MR. SIMMONS: Yeah, that is what I'm
24 getting at.

25 MR. KAHN: And ultimately with the

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1 financial statements that's how it works.

2 MR. SIMMONS: Okay. Good. Thanks.

3 Q Exhibit 66, you want to just explain to me what that is
4 telling me.

5 A Again this is an inventory sales report processed
6 through the collectors club and specifically for item
7 No. 90118, which was called Red Angela. It also
8 includes item No. 90118-D, which again it is Red Angela
9 but I understand the dash D stands for damaged.

10 Q Okay. And I'm just trying to figure this out from the
11 document, and you know that by looking in the upper
12 left-hand corner, is that right, where it says item
13 numbers, it has two columns for item numbers?

14 A Correct. And the first column says "From" and I started
15 with item No. 90118 and then ended with 90118-D because
16 I wanted to be able to collect any sales that related to
17 that specific toy.

18 Q Okay.

19 A This is similar to the dash R that's a repaint.

20 Q Oh, okay. And then looking to the actual entry on this
21 page, customer name is listed as "Archives to take out
22 of each." Can you tell me what that means.

23 A Well, the each actually falls under the unit column.

24 Q Okay.

25 A I would imagine if we can see that entire line for the

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1 customer name, it would say "Archives to take out of
2 inventory." They are archived toys. They take a
3 certain amount of them and put them away for whatever
4 reason. I can't answer the reasons behind it other than
5 we would like to have samples of all of our toys put
6 away in a safe place.

7 Q To be used as exhibits in lawsuits, right?

8 A I won't answer that.

9 Q That's not a question. Okay. Turning to the second
10 page of Exhibit 66 --

11 A Yes, sir.

12 Q -- you want to just explain that, the information on
13 that page to me.

14 A That is a sales document analysis report which I
15 explained to you before is very similar to the inventory
16 system of sales report only it doesn't give the dates
17 and detail that the inventory sales report would do, and
18 it specifically addresses item No. 90131, which is
19 called the Gold Angela.

20 Q Okay. And then the profits column, it's showing it in
21 parentheses, which I think means it's a negative number,
22 is that right?

23 A Yeah, that's correct.

24 Q Why is that?

25 A I would have to run off the detailed report to be able

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1 to answer that.

2 Q Any --

3 A I'm sorry, I'm just so used to running off the sales
4 document analysis report that I guess sometimes I ran
5 off the wrong report. I should have run the one with
6 the detail in it and I didn't. So if you need me to
7 replace those reports, I will certainly do that.

8 Q Okay. I don't know that we need you to do that at this
9 point.

10 A Okay.

11 Q And so then flipping through the remaining pages of
12 Exhibit 66, stop at 1593.

13 A Yes.

14 Q Okay. Again, am I right in saying this is just showing
15 me the total number of Heavenly Fire Angela figures that
16 were sold by the McFarlane Toys Collectors Club?

17 A Correct.

18 Q Okay. During the entire time period that this database
19 has been in operation through the date of your report?

20 A Correct.

21 Q Okay. Stopping at the second to last page, which is
22 1595 --

23 A Yes, sir.

24 Q -- at the top of the page it refers to McFarlane Toys
25 Canada, Inc. Can you explain to me what this document

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1 is referring to.

2 A McFarlane Toys Canada, Inc. is the company that handles
3 all of our Canadian sales.

4 Q Okay.

5 A So this is again a document analysis report showing the
6 sales that occurred during the time frame that I put in,
7 which was the entire period for just items 10113.

8 Q And there were no sales?

9 A Correct.

10 MR. SIMMONS: And, Mike, I don't
11 want you to have to testify or maybe Julaine can,
12 but you were talking about before all the sales
13 running through TMP International. Do you know
14 whether that would be true for McFarlane Toys
15 Canada, Inc.?

16 MR. KAHN: Yeah, you know, we can
17 check on this. I believe that that is the case,
18 and Julaine may actually be able to tell us for
19 royalty purposes generally, Julaine, if you have,
20 let's take an example, action figures for some
21 other licensor that gets sold in the United States
22 and Canada and overseas, how are those other -- are
23 there three separate royalty reports that would go
24 out then or would they be all collected under one?

25 THE WITNESS: The actual royalties

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1 are all collected under one report, but I do run
2 reports out of each company.

3 MR. KAHN: Okay.

4 MR. SIMMONS: And when you say
5 royalties, we're referring to royalty reports, do
6 you mean royalty reports, royalties paid from TMP
7 International to Todd McFarlane Productions, is
8 that what --

9 MR. KAHN: Either that or I was
10 asking her even more generally with other
11 licensors, so Todd McFarlane Productions or some
12 other licensor.

13 MR. SIMMONS: Oh, if TMP
14 International is making toys for somebody else?

15 MR. KAHN: Correct.

16 MR. SIMMONS: Okay.

17 MR. KAHN: So I believe the answer,
18 Julaine, correct me if I'm wrong, is there will be
19 a single royalty report but included within that
20 report will be a breakdown of sales domestically
21 and Canada and overseas?

22 THE WITNESS: That is correct.

23 MR. SIMMONS: Okay. Thanks, Mike.

24 A One other thing that I wanted to point out is on the
25 McFarlane Toys Canada, Inc. reports, if there is any

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1 dollars that show on this report, it's going to be in
2 Canadian dollars.

3 Q I notice there is a C in the dollar columns.

4 A Yes.

5 Q Okay. Just one second here. Sticking with Exhibit 66
6 for a minute, there is only two pages for McFarlane Toys
7 Canada. How do you -- I guess how do we know there
8 shouldn't be more pages for McFarlane Toys Canada? It
9 looks like you only ran them on two characters.

10 A If you look at Exhibit No. 67, there is more reports.

11 Q Okay. Sorry about that. Let's turn to Exhibit 67 then.
12 Again just the first page of Exhibit 67, am I right that
13 this is showing me that McFarlane Toys, Inc. made no
14 sales of the Battle Horse With Medieval Spawn?

15 A That is correct.

16 Q Okay. Turning to the second page, it's showing me that
17 McFarlane Toys, Inc. made no sales of the Medieval Spawn
18 character with the item numbers listed in the upper
19 left-hand corner, 11202 and 11202-R?

20 A That's correct.

21 Q I'm sorry, looks like it made one sale but no money was
22 received for that, it was a sample sale?

23 A Correct.

24 Q Okay. Turning to the third page, TM 1599, are you
25 there?

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1 A Yes.

2 Q Okay. Why don't you explain to me what that page is
3 showing us.

4 A Okay. Item No. 11200 is going to be the assortment of
5 Spawn Series No. 17. That includes several toys, one of
6 which is item No. 11202 that is on the previous page, we
7 sold as an assortment. We only made one sample sale as
8 an individual toy, which is the one to Cliffwood
9 Productions.

10 Q Okay. And turning back to Exhibit 59, the first
11 exhibit, which is the compilation that you put
12 together --

13 A Yes, sir.

14 Q -- can you just tell me where, if at all, on Exhibit 59
15 the items listed on these two pages of Exhibit 67 would
16 fit in. Does that make sense?

17 A Yes. If you look down at the bottom under Medieval
18 Spawn, you'll see Spawn Series No. 17. To the right of
19 that it gives item No. 11202. That is the item number
20 for the specific toy Medieval Spawn. The item number
21 for the entire series, which is the assortment, is
22 11200.

23 Q Okay. Again I'm on the third page here, TM 1599. Can
24 you explain to me the last entry, the Spawn Classic
25 Series.

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1 A If you look to the left of that under the column that is
2 labeled item number, the first item number is 11200,
3 which is the original assortment. The second item
4 number has a dash C and a dash R. The dash C tells me
5 that it is trilingual, in other words, it has three
6 languages on the package. The dash R tells me it's a
7 repaint. The 11200-R is a repaint without the
8 trilingual.

9 Q Okay. So if we're going through all the documents that
10 you have produced, and maybe we can shore some of this
11 up, if we took the number, you know, 11200, is it your
12 understanding you have produced documents that will show
13 reports for each McFarlane company, the toy collectors
14 club, McFarlane Toys, Inc., McFarlane Toys Canada, there
15 should be separate reports in the documents that we have
16 received for each company for this item number, 11200?
17 Did that make sense? It was a little bit of a
18 convoluted question.

19 A Yes, that makes sense.

20 Q So for this item number I should have individual reports
21 for each company --

22 A Yes.

23 Q -- is your understanding. Okay. Bear with me for a
24 second. I'm going to see if I can flip through some of
25 these and move us ahead a little bit.

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1 (Counsel examining documents)

2 Q Turning to page TM 1604 --

3 A Yes.

4 Q -- it looks like these are sales made by McFarlane
5 Worldwide, Inc., is that correct?

6 A Yes, sir.

7 Q Do you know whether McFarlane Worldwide, Inc. is still
8 making sales of toys?

9 A Yes, it is.

10 Q Okay. Do you know what McFarlane Worldwide, Inc.'s
11 relationship is to TMP International?

12 A I don't understand the question.

13 Q I guess it sounds like, you know, the McFarlane Toys or
14 McFarlane Toys Canada handles sales in Canada.
15 McFarlane Toys, Inc. handles sales of toys in the U.S.,
16 is that correct so far?

17 A Correct.

18 Q And the toy collectors club may handle some other subset
19 of customers, is that correct?

20 A Correct.

21 Q So do you have an understanding as to what group of
22 customers McFarlane Worldwide, Inc. makes sales to?

23 A Yes, that's all our international sales.

24 Q Okay. So it's everything else essentially?

25 A Anything outside of the U.S. and Canada, yes.

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1 Q Okay. Do you know how the sales -- all the sale prices
2 on this page are listed in dollars, and I'm just
3 wondering, are there any currency exchange issues when
4 you're dealing with sales by McFarlane Worldwide, Inc.?

5 A No. All sales in McFarlane Worldwide, Inc. are done in
6 U.S. dollars.

7 Q And again for royalty purposes, all the McFarlane
8 Worldwide, Inc. sales, do those run through TMP
9 International?

10 A Well, that's kind of a -- I don't know how to answer
11 that. The salesmen sales are run through Worldwide for
12 royalty reporting purposes. I gather all of the sales
13 from all the different companies. I report them under
14 one royalty statement.

15 Q Okay. I guess that's what I needed to know. So they
16 all --

17 A The information is separate on the royalty statement. I
18 will show domestic, I will show Canada and I will show
19 international sales on the statement itself.

20 Q Okay. This royalty report that we're sort of talking
21 about generally, is there a specific report that you run
22 annually or over some period of time to show what your
23 total sales are for purposes of the various royalties
24 you have to pay out?

25 A It depends on how any individual contract is written,

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1 but on the average I report royalties on a quarterly
2 basis, a calendar quarter.

3 Q Okay. I don't know if you can tell me how many various
4 entities you run out royalty reports for. Can you
5 identify some of the companies that you run out royalty
6 reports for? And I guess I mean licensors, that's what
7 I'm saying, yes, who the various licensors are that you
8 run out royalty reports for.

9 A Well, I can -- I suppose I could identify some just off
10 the top of my head.

11 Q Sure, whatever you can think of right now.

12 A Let's see. Universal Studios, Dream Works, National
13 Football League, National Basketball Association,
14 players associations relating to all the different
15 sports, hockey, baseball, football, there is probably 50
16 to 100 different royalty reports.

17 Q Okay. Have you ever done one for Todd McFarlane
18 Productions, have you ever run a royalty report for Todd
19 McFarlane Productions?

20 A I don't do royalty reports for Todd McFarlane
21 Productions. I do compile information, but it's not
22 done on a royalty report like what I send out to
23 licensors.

24 Q How is it done?

25 A Well, the same information is gathered, but it's

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1 gathered and put into a whole different format than our
2 actual royalty report. I make internal journal entries
3 to move everything into the Todd McFarlane Productions
4 company, so any sales that occur in, say, McFarlane
5 Worldwide or Canada or collectors club or toys domestic
6 sales, all of that is calculated within the company. It
7 is expensed. The royalty is expensed within that
8 company, but then it is all transferred internally by
9 journal entries to Todd McFarlane Productions.

10 Q Is that something you do on a regular basis, do you do
11 it, say, once a month or --

12 A Since I took over, I have done it once a month, yes.

13 Q So there would be a report for every month showing those
14 transfers for royalty purposes to Todd McFarlane
15 Productions?

16 A Yes, for the last year, yes.

17 MR. SIMMONS: Okay. Mike, if we
18 could get copies of those as well.

19 MR. KAHN: Okay. Can we limit those
20 to -- well, I guess we could limit them to the same
21 categories of characters that --

22 MR. SIMMONS: I think so, yeah.
23 I'll let you know if I come up with a reason why
24 not, but yeah, I think so.

25 THE WITNESS: Now, that's going to

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1 be a report that I generate because I take
2 everything relating to Spawn and lump it
3 all together. So if I'm going to be splitting
4 things out --

5 MR. KAHN: Well, you know what. Why
6 don't we -- how about if we start you up with a
7 couple sample Spawn reports and look at them and
8 see whether you want that information broken out.

9 Q Julaine, you said you have done it just for the past
10 year, right?

11 A Yes, sir.

12 Q So why don't we just get the ones for the past year.
13 That would be fine. How voluminous are these? How many
14 pages do you think these are?

15 A That depends on what you're asking for. Are you asking
16 for the report to make the journal entry or all the
17 documentation that pertains to that report?

18 Q I think I'm just asking for the report that you use for
19 the journal entry.

20 A Okay. Then it's just one page each month.

21 Q Why don't we just get those.

22 A Okay.

23 Q And then do you know, Julaine, was somebody preparing
24 similar reports for Todd McFarlane Productions before
25 you got there?

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1 A I have found no evidence of that.

2 Q Okay. Why don't we turn to Exhibit 68. Are you there?

3 A Yes, sir.

4 Q Okay. Am I correct that this is a report showing sales
5 of the Count Cogliostro action figure by McFarlane Toys
6 Collectors Club?

7 A That's correct.

8 Q And this Count Cogliostro figure that's referenced on
9 Exhibit 68, does that correspond with the Count
10 Cogliostro item that's identified on Exhibit 59?

11 A Yes, sir.

12 Q Just one second. One of the exhibits here is out of
13 order. If you could go to the very back of your exhibit
14 pile and pull up Exhibit 120.

15 A Yes.

16 Q Okay. Do you recognize Exhibit 120?

17 A I recognize it only that I received it from you, yes.

18 Q So this is not a document that you assembled?

19 A No, sir.

20 Q Okay. Do you have any idea what this document is?

21 A I can basically tell you what it looks like to me, but
22 it's not a normal document that was run out of any
23 software program here.

24 Q What does it look like to you?

25 A Simply by looking at the customers' names, look vaguely

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1 familiar within the -- the information that is contained
2 in the far left-hand column looks like it could be
3 customer ID numbers. This does look like it could be a
4 re-creation of some sort of the documents that I have
5 provided to you that are called sales document analysis
6 reports.

7 Q Okay.

8 A But it looks to me like this was an extract exported out
9 of our Great Plains software program and possibly into
10 Excel and then printed from there.

11 Q And so you mentioned those various computer programs.
12 Does that mean it's information that would exist on your
13 current database or is this stuff that was created in a
14 previous computer system?

15 A There are no dates on this report anywhere that I have
16 seen that would tell me what time frame that this is
17 covering at all, so to be honest, I can't answer that.

18 Q Sure. That's fine. Do you have any idea what the
19 right-hand column or the last column that has numbers in
20 it, it says 4.9 all the way down the page, any idea what
21 that might be referring to?

22 A No, I don't. I wondered the same thing. I have no
23 idea. In fact -- well, I would be totally speculating.

24 Q And that's fine. If I could turn your -- if you could
25 turn to page 34, what's listed as page 34 of that

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1 document, Exhibit 120, also it's Bates TM 401, you'll
2 see -- and again I may be asking you to speculate here,
3 so just feel free to tell me if you have no idea, but
4 there are some -- looks like there are some total
5 numbers listed towards the top of the page. See where
6 it says item totals?

7 A Yes.

8 Q Angela production units and then there is a percentage
9 number, 24.09 percent.

10 A Yes.

11 Q Any idea what that percentage number is referring to?

12 A I have absolutely no idea whatsoever what the purpose of
13 those calculations are.

14 MR. SIMMONS: Okay. Direct this to
15 your attorney. Mike, do you have any idea who
16 would know about these documents?

17 MR. KAHN: Our best bet I think
18 within the company anyway would be Todd.

19 MR. SIMMONS: Does anybody else work
20 there?

21 MR. KAHN: All that Julaine and I
22 could figure out is that this document got
23 produced, it was probably maintained out of order,
24 because the page 1 of this document appears --

25 MR. SIMMONS: Yeah, it's in the

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1 back.

2 MR. KAHN: -- to start after
3 page 36. I will tell you, for the record, that
4 these are among the documents that appear to have
5 been generated back in 1997 --

6 MR. SIMMONS: Oh, okay.

7 MR. KAHN: -- in an attempt to
8 calculate some sort of royalties, but I don't know
9 that for sure. I just know that when we went back
10 and looked for older documents, we found among all
11 the Gaiman type documents several documents that
12 look like this, which appear to be compilations of
13 numbers having to do with sales of different toys.

14 MR. SIMMONS: Well, I'll talk to you
15 later.

16 MR. KAHN: Right. Let us try to
17 work this out. I mean we can talk about this. I
18 can maybe get some more information. Maybe we can
19 even talk to Allan, see if he knows what these are.

20 MR. SIMMONS: Sure.

21 Q Well, that's going to dispense with several exhibits
22 then because I think Exhibits 69, 70 and 71 look to be
23 the same sort of reports. If you could just take a
24 quick look at 69, 70 and 71, Julaine, and just let me
25 know if you recognize any of those documents.

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1 A Again you're right, they are exactly like No. 120 and I
2 can't verify this information at all.

3 Q Okay. That's fine.

4 MR. SIMMONS: I'm actually at sort
5 of a logical point for a pause.

6 (A short recess is taken)

7 Q Julaine, I'm going to ask you to turn to Exhibit 72.

8 A Yes.

9 Q Do you recognize Exhibit 72?

10 A Only from you producing it to me.

11 Q Okay. So this is -- you have never seen this before?

12 A No, sir.

13 Q Okay. Do you have any understanding what this document
14 is?

15 A No. I could tell you my interpretation again, but I
16 really don't know.

17 MR. SIMMONS: Okay. Mike, any idea,
18 is this something we're going to have to ask either
19 Todd or Allan about?

20 MR. KAHN: This is something again
21 which was included in the pile of materials that
22 apparently were generated sometime in the summer of
23 1997.

24 MR. SIMMONS: Okay. That's kind of
25 what I thought.

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1 Q We'll turn to Exhibit 73. Do you recognize that
2 document?

3 A I recognize the format of the document, but as far as
4 ever seeing this document before you produced it to me,
5 it was the first time I had seen it.

6 Q What do you recognize the format as being?

7 A It looks like information directly off of a purchase
8 order that we may have placed with our manufacturer.

9 Q Probably just reflecting the cost to produce various
10 toys?

11 A Correct, as well as other information, such as tooling
12 and other various costs that would enter into it.

13 Q Turn to Exhibit 74. Do you recognize Exhibit 74?

14 A I recognize it from you producing it to me. It looks
15 like what would accompany a purchase order instructing
16 our manufacturer as to the shipping schedule.

17 Q Do you currently create documents similar to this?

18 A The company currently creates them. I as an individual
19 do not.

20 Q Okay. Do you have any understanding of -- the documents
21 that the company currently produces relating to shipping
22 schedules, do they look just like this, same format?

23 A Basically the same format, yes.

24 Q Can you sort of -- do you think you can walk me through
25 what this document is telling me?

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1 A Yes.

2 Q Okay. Just starting with the first line with a date on
3 it, this is January 14th, 1995?

4 A Yes.

5 Q Can you tell me what you think that line is telling me.

6 A I think each one of those lines of dates is telling --
7 for that first line, January 14th, 1995, all the
8 information to the right of that number is going to tell
9 you what items and quantities of those items are to ship
10 during that week.

11 Q Do you know what the second column on the left, "asst,"
12 do you know what that stands for, what it might stand
13 for?

14 A My interpretation of that, because that's not something
15 real common, my interpretation is that they had set up
16 several different assortments, in other words, different
17 ratings of the toys in respect to the entire assortment
18 whereas in one week you may ship out as part of the
19 assortment more of No. 10111 in one week than you would
20 in another week. So maybe assortment No. 4 tells them,
21 okay, these are the specifics of that assortment as far
22 as how many of each of these toys are to be produced and
23 shipped. But that's my interpretation.

24 Q Sure. And again, I understand you may not really know
25 the answer to this, but I'm just trying to figure out

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1 what you just said. So assortment 4, it looks like the
2 line that says assortment 4 corresponds with Commando
3 Spawn, with a Commando Spawn character, am I reading
4 that correctly?

5 A Yeah, and because there is assortments all the way
6 across, to be honest with you, I don't know what they
7 were referring to --

8 Q Okay. That's fine.

9 A -- back in those times. I know that what goes out with
10 our purchase orders now are very specific, so it
11 wouldn't have this kind of vague information on it.

12 Q Okay. Turning to Exhibit 75, I realize this is probably
13 a document created before your time, but do you have any
14 understanding as to what this document might be?

15 A No.

16 Q Okay.

17 A This could be created anywhere, anytime. It's very
18 vague. I mean I can see that there are names of toys
19 across the top and there are dates. It could be some
20 sort of a shipping schedule, but it's titled "New Spring
21 Pricing," so I couldn't really tell you.

22 Q Have you ever created or seen documents, documents
23 created since you have been with TMP International that
24 are titled "New Spring Pricing" or, you know, new
25 whatever season pricing?

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1 A The only thing that I would correlate with that would be
2 a price list that may or may not change throughout any
3 given year, and if there is a change that occurs, then
4 they will put out a new price list and they may put a
5 similar title to it. But it would contain the item
6 numbers and descriptions and specifics as to the price
7 that we would offer our customers on any of the given
8 toys that it would contain.

9 Q Okay.

10 A This is too vague right here to be anything that would
11 relate to a price list.

12 Q Okay. Turn to Exhibit 76.

13 A Yes.

14 Q Same sort of questions, can you give me any explanation
15 what this document is?

16 A Well, I can tell you my interpretation of it. Again
17 there is no item numbers on here. There is just names
18 of toys. But it gives shipping dates on the left-hand
19 side and I would assume all numbers to the right of that
20 underneath each of the different names of toys are
21 giving quantities of the amounts that are shipped in
22 relation to that shipping date.

23 Q All right. Exhibit 77.

24 A Yes.

25 Q Can you give me any explanation of that document?

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1 A I would say very similar to No. 76, it looks like
2 shipping dates on the left-hand side and quantities of
3 the different toys which are noted across the top.

4 Q Okay. Exhibit 78.

5 A Yes.

6 Q Do you have any understanding what that document is?

7 A My interpretation of it is it looks like some sort of a
8 royalty calculation for Neil Gaiman.

9 Q This is a document you -- have you ever seen this
10 document before?

11 A No, I have not.

12 Q Okay.

13 A It looks like a document that somebody has also amended
14 by hand, and I don't recognize the handwriting or
15 anything on any of it.

16 Q Okay. There is a box with some figures in it and then
17 below that there is a series of totals and subtractions
18 and there is a listing for freight and duty and tax and
19 insurance, shipping. I know you don't know how these
20 specific percentages were arrived at in Exhibit 78, but
21 I'm wondering, at TMP International do you maintain
22 information that would allow you to give us the current
23 freight percentage, current duty and tax percentage,
24 insurance percentage, percentages corresponding with
25 what are listed in Exhibit 78?

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1 A Yes, we do.

2 Q I don't know if you can answer it off the top of your
3 head, but do you have any idea what some of those
4 percentages might be today?

5 A Off the top of my head, I do not. I know we do have
6 files that contain the information. It's just I don't
7 have it in front of me.

8 Q Sure. That's fine. And again I recognize that you
9 didn't create this document, but looking at the
10 beginning at the third line from the bottom, do you see
11 where it says royalty rate?

12 A Yes.

13 Q And it looks like it says publisher after that?

14 A Yes.

15 Q And then there is a five percent listed in the column to
16 the right of that?

17 A Yes.

18 Q Can you make any guess as to what that is referring to?

19 A I would assume that the five percent is the actual
20 royalty rate that was used in calculating royalties due
21 to Neil Gaiman at the time this document was produced.

22 Q Okay. Could it also be the royalty rate that Todd
23 McFarlane Productions receives from TMP International?

24 A Yes, it could be, because that is the rate that I use to
25 calculate royalties on Spawn toys.

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1 Q Okay. And looks like there was a 3.5 percent figure
2 that was crossed out there. Do you see where I'm
3 referring to?

4 A I'll have to take your word for it being 3.5. I see
5 there is a number there that's crossed out, but --

6 Q Yeah, I know, it's small type.

7 A Yeah.

8 Q Assuming it's 3.5 percent, do you have an understanding
9 that the royalty from TMP International to TMP was ever
10 3.5 percent?

11 A I have never seen anything that would tell me that, no.
12 It's always been five percent from everything I have
13 seen.

14 Q And what have you seen that tells you that it's five
15 percent today?

16 A Well, I have had to go back into previous years, mainly
17 just the last two years, back into the early part of
18 2000, to try and reconcile the entries that were made
19 from the different entries to production and paying Todd
20 for royalties and reconciling it, so I looked over many
21 documents in that period of time.

22 Q When you say paying Todd for royalties, do you mean --

23 A McFarlane Productions, I'm sorry, paying the company.

24 Q Sure. Have you ever seen any sort of license agreement
25 or royalty agreement between Todd McFarlane Productions

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1 and TMP International?

2 A Yes, I have.

3 Q And did the agreement specify a royalty percentage?

4 A Yes, it does, and I'm sure it's -- pretty sure it's five
5 percent, but again I would be working off my memory.

6 Q Sure. That's fine. I'm going to turn your attention to
7 Exhibit No. 79 now.

8 A Okay.

9 Q Do you recognize Exhibit 79?

10 A No, I don't, other than you provided it to me.

11 Q Sure. Do you have any -- in the upper right-hand corner
12 it refers to Spawn Archives Chromium. Do you see that?

13 A Yes.

14 Q Any idea what that's referring to?

15 A No, I don't. I just see at the very top of this
16 document that it was faxed from somebody called
17 Wildstorm, so I don't think this has anything to do with
18 any transactions within this company.

19 Q Have you ever heard of a company called Wildstorm?

20 A No, no, just in the documents that I have seen here.

21 Q Okay. Below the Spawn Archives Chromium it just says TC
22 in capital letters. Do you see that?

23 A Yes, sir.

24 Q Is it possible that that could be referring to trading
25 cards?

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1 A That could very well be. I don't know.

2 Q Does Todd McFarlane Productions or TMP International
3 ever use the abbreviation TC to refer to trading cards?

4 A Not in the period of time that I have been here, but we
5 also have not sold trading cards in the period of time
6 that I have been here.

7 Q Okay. Turn to Exhibit 80.

8 A Okay.

9 Q Do you recognize Exhibit 80?

10 A I recognize it from you providing it to me.

11 Q Okay. Exhibit 80 looks like a document from Irwin Toy
12 Limited?

13 A Yes, sir.

14 Q And then actually on the second page of the document in
15 the upper left-hand corner it refers to TMP Irwin
16 Licensing Corporation. Do you see that?

17 A Yes, sir.

18 Q Do you have any understanding who Irwin Toy Limited or
19 TMP Irwin Licensing Corporation might be?

20 A Yes, sir.

21 Q Okay. And who are they or what are they?

22 A TMP Irwin Licensing Corporation was a company, some sort
23 of a partnership, I have never seen any actual
24 documentation on it, but they handled our international
25 sales before the company McFarlane Worldwide, Inc. was

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1 formed.

2 MR. SIMMONS: Okay. And so, Mike,
3 if I wanted to ask anybody about that, would Todd
4 probably be the person?

5 MR. KAHN: Yeah, Todd would be the
6 one who would know.

7 Q Turning to Exhibit 81 --

8 A Yes, sir.

9 Q -- can you tell me what Exhibit 81 is.

10 A Yeah, I recognize this one.

11 Q It's got your name on it.

12 A Yeah, I better recognize it. Yes, I do.

13 Q Okay. Can you tell me what it is.

14 A In preparation for documents that were being requested,
15 I contacted somebody with the company HBO and requested
16 from them any copies of royalty statements and checks
17 that they could provide to me in reference to Spawn, the
18 movie, or I guess this was the TV series. I'm sorry.

19 Q Right. This is the HBO animated TV series?

20 A Yes.

21 Q And are these royalties, are these checks for sales of
22 videotape or are they royalties for showing of the
23 series on television, do you have any understanding as
24 to what the royalties correspond to?

25 A My interpretation of the statements that they provided

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1 to me are that these are for sales of videotapes.

2 Q And do you know how many different videotapes are there?

3 A Again going from these documents here, they mention
4 Spawn I, Spawn II and Spawn III.

5 Q Okay. Have you had any other contact with HBO or HBO's
6 representatives about the HBO series other than calling
7 to request these royalty reports?

8 A No, I have not.

9 Q Do you know who normally does deal with HBO on these
10 matters, if anybody?

11 A Well, there is no reason to be dealing with HBO right
12 now simply because there is no animated series going on.
13 Prior to that I would imagine that maybe Terry
14 Fitzgerald.

15 Q Turning to the third page of Exhibit 81, you see
16 apparently there is a Xerox of some attorney work
17 product on here, Post-it note that should have been on
18 there, but there is a -- do you see where it says
19 "T. McFarlane share at 25 percent"?

20 A Yes.

21 Q Can you tell me what that's referring to?

22 A Well, it looks like it's 25 percent of the total royalty
23 that is calculated on the line above it. I would have
24 to have a calculator to know that for sure, but that's
25 my assumption at this point.

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1 Q But you don't have any understanding, any personal
2 understanding of where that 25 percent figure is coming
3 from?

4 A No, I don't.

5 Q Do you know where that money -- that 25 percent, is that
6 something that comes to TMP or TMP International or Todd
7 McFarlane directly?

8 A It goes to Todd McFarlane Productions, the company.

9 Q And then it didn't look to me like this exhibit contains
10 all of the royalty reports that may have been sent out
11 for this, for these videos. We're a little bit out of
12 order here, but let's see, it looks -- I think, bear
13 with me one second as I flip through here, looks like
14 the earliest statement we have for Spawn, turn to page
15 TM 1552.

16 A Okay.

17 Q I think that is the first statement in here for -- no, I
18 take that back. Turn to TM 1557, second to last page.

19 A Okay.

20 Q It looks like that's the earliest statement we have for
21 the Spawn video. I assume it's the first Spawn video
22 because some of the other documents refer to Spawn II
23 and III, yet it says Royalty Statement No. 7. Do you
24 see where I'm --

25 A Yes.

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1 Q -- referring to?

2 A Yes.

3 Q Do you have any understanding as to whether there were
4 additional royalty statements given to TMP or TMP
5 International?

6 A Again I would interpret that as being yes, that there
7 were, but I don't know that for a fact. And we are
8 getting back into a time period where no
9 documentation -- as far as looking on a computer program
10 to see where a deposit may have occurred is very
11 difficult.

12 Q Again these are documents you requested from HBO,
13 though, correct?

14 A Correct.

15 Q So you just asked them to give you whatever they had
16 relating to royalties that were paid out?

17 A Yes.

18 Q Okay.

19 A But like you, because it says statement No. 7, I would
20 on a normal basis go back to them and say can I have
21 statements 1 through 6.

22 Q Sure. Did you do that in this case?

23 A No. I received the information and forwarded it without
24 really reviewing it.

25 Q Fair enough. Turning to Exhibit 82, do you recognize

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1 Exhibit 82?

2 A Yes, this is an agreement with New Line Productions.

3 Q I believe in the re line it refers to itself as a
4 merchandising agency agreement, and if you turn -- I
5 take that back. Do you have any understanding as to
6 whether any merchandise was produced by New Line
7 Productions pursuant to this agreement?

8 A I don't have personal knowledge of that at all.

9 Q Okay. Do you have any understanding as to whether there
10 was any merchandise produced in conjunction with New
11 Line?

12 A Produced by New Line?

13 Q Well, it looks to me like this is an agreement between
14 Todd McFarlane Productions and New Line Productions and
15 it's indirectly also with Katja, K-a-t-j-a, Motion
16 Picture Corp. relating to merchandise that New Line
17 and/or Katja might produce as a result of the Spawn
18 motion picture. I'll just represent that to you as
19 that's my interpretation of the agreement.

20 Do you have any understanding as to whether any
21 companies produced merchandise or sold merchandise
22 relating to the Spawn motion picture?

23 A I have an understanding that that did occur, but I could
24 not sit here and give you any names of companies or any
25 items that were actually manufactured without further

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1 investigation.

2 Q Sure. Do you have any idea what items might have been
3 produced just generally, I mean do you know whether
4 there was any clothing produced?

5 A I'm sorry, I couldn't give you any specifics right now.

6 Q Okay. Well, turn to Exhibit 83.

7 A Yes.

8 Q Do you recognize Exhibit 83?

9 A From you producing it to me.

10 Q Okay. Do you have any understanding as to what
11 Exhibit 83 is?

12 A It looks like a financial statement referencing Spawn.
13 Because it's Random House, I would assume it's some sort
14 of printed publication. It looks like it might be some
15 sort of a royalty report of some kind.

16 Q Sure. But again you're just reading the document and
17 sort of speculating as to what it might be, correct?

18 A Correct.

19 Q Okay.

20 A I have not gone in and verified receipt of any monies
21 that this report may say that it has given to Todd
22 McFarlane Productions.

23 Q Okay. Turn to Exhibit 84.

24 A Yes.

25 Q Do you recognize Exhibit 84?

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1 A I have seen it before, yes.

2 Q Okay. Do you have any understanding as to what it is?

3 A Well, I know that it's a license agreement. I have not
4 studied it to know the details of the agreement itself,
5 no.

6 Q Okay. It looks to me to be an agreement between Todd
7 McFarlane Productions and a company called Capcom,
8 C-a-p-c-o-m, Company, Ltd.?

9 A Yes.

10 Q It's a Japanese company and it looks to me like an
11 agreement to make various video games?

12 A Yes.

13 Q Incorporating a bunch of characters from the Spawn
14 series. Do you know whether any video games were ever
15 produced in conjunction with Capcom?

16 A I could not verify that one way or the other.

17 Q Okay.

18 A Again, these are in time frames that are before my time.

19 Q During the time that you have been with Todd McFarlane
20 or TMP International, are you aware of any video games
21 incorporating any of the Spawn characters?

22 A There is nothing at the moment that we are receiving as
23 far as royalties are concerned in that regard, no.

24 Q Has there ever been a time when you have been at TMP
25 International that royalties came in for video games?

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1 A No.

2 Q Turn to Exhibit 85.

3 A Yes.

4 Q Do you recognize Exhibit 85?

5 A From your producing it to me, yes.

6 Q In the lower right-hand corner it has a date of
7 June 22nd, 1999. Again that's before your time,
8 correct?

9 A Yes, sir.

10 Q When was your start date? I apologize. I may have
11 asked you this already.

12 A The end of June of last year, 2001.

13 Q This looks like a royalty statement from 989 Studios.
14 Have you seen subsequent, have you ever seen royalty
15 studies from 989 Studios during the time that you were
16 at TMP International?

17 A No, sir. Seeing this document was the first time I had
18 ever seen that company name.

19 Q Okay. Turning to Exhibit 86 --

20 A Yes.

21 Q -- same question, do you recognize Exhibit 86?

22 A I recognize it for what it is. I have never seen it
23 before and I have not seen any royalty statements or
24 payments come in from Sony in regards to Spawn.

25 Q Are you aware of any agreements between TMP or TMP

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1 International and Sony?

2 A My memory tells me that I have seen it, but I can't
3 verify that without having it in front of me.

4 Q Okay. Move on to Exhibit 87.

5 A Okay.

6 Q Just give me a second here.

7 A Okay. Yes.

8 Q Do you recognize Exhibit 87?

9 A Again I have seen this document, but I have not actually
10 read it as far as knowing the details of the document.

11 Q Okay. Looks like an agreement between HBO and Todd
12 McFarlane Productions. Again I may have asked you this
13 before in conjunction with the videotapes, but are you
14 aware of any other payments of any form, royalties or
15 license fees or anything coming to TMP International or
16 TMP from HBO, anything other than the videos that we
17 already discussed?

18 A No, I'm not. There has not been any reports or any
19 payments that have been received in the year that I have
20 been here.

21 Q Okay. Turning to Exhibit 88 --

22 A Yes.

23 Q -- do you recognize Exhibit 88?

24 A From you producing it to me, yes.

25 Q Okay. It looks to be an actor agreement between Todd

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1 McFarlane and HBO. This may be subsumed in the previous
2 question. Are you aware of any payments coming to Todd
3 McFarlane individually or Todd McFarlane Productions
4 from HBO relating to any sort of actor agreement?

5 A No, sir, I'm not.

6 Q Exhibit 89, do you recognize Exhibit 89?

7 A Yes.

8 Q Okay. Good. Is this a document you created?

9 A I didn't create it, but I provided it to you from our
10 database.

11 Q Okay. You provided it from the database. Is this a
12 format, is this a document that you can -- describe for
13 me how this document was produced.

14 A Well, we have a couple of people that kind of oversee
15 all of the workings for any of the comics that we are
16 involved in, and so they maintain a database on all the
17 Spawn, all the -- any comics that we are involved in,
18 there will be a page similar to this one that you're
19 looking at here as Exhibit 89 that gives all the
20 information relating to the artists that were involved
21 and also gives a summary of what the plot of the comic
22 is and also lists the characters that are included in
23 the comic.

24 Q Okay. And is this information maintained on the same
25 database that you were referring to earlier that you

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1 used to generate Exhibit 59?

2 A For the comics area of that exhibit, yes.

3 Q And I notice on the first page of Exhibit 89 there is a
4 section that says "Print Run," you see it about
5 two-thirds of the way down the page?

6 A Yes, sir.

7 Q And there is nothing listed in that section, is that
8 correct?

9 A Yes, sir.

10 Q Is print run information available for this particular
11 issue of Angela? Could you have generated information
12 to fill in that space?

13 A I imagine that there is documents that I could probably
14 locate that would give me that print run information.

15 Q But if it's not in Exhibit 89, does that mean the print
16 run information isn't in your database?

17 A That's correct.

18 Q And then turning to the second and third pages of
19 Exhibit 89, I guess the same question again, they look
20 like the same type of reports as the first page, again
21 there is no print run information?

22 A Yes.

23 Q That probably means it's not in the database?

24 A That is correct, because the person who was maintaining
25 the database didn't put that information in.

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1 Q From what I have seen, what's been produced -- well,
2 actually, turn to Exhibit 90 first.

3 A Okay.

4 Q Can you tell me what Exhibit 90 is.

5 A Again this is another print-off giving the information
6 regarding the Angela trade paperback book. This is
7 information that is in our database.

8 Q Okay. And here Exhibit 90, all three pages of
9 Exhibit 90 do have print run numbers associated with
10 them on the right side of the page?

11 A Yes. If you'll notice, all three of them are the same,
12 the same publication. They are all three book number
13 one. It's simply giving us the pictures of the three
14 different covers that were used for that particular
15 trade paperback.

16 Q Do you know where that print run number would have come
17 from to begin with? When somebody inputted into that
18 database, where do they get that number from to put into
19 the database?

20 A I can tell you where I think that they probably got it,
21 but I'm not the person who put that information in, so I
22 can't verify it.

23 Q Yeah.

24 A I believe that Image Comics would have provided us with
25 that information.

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1 Q And I'm noticing the only sheets that we have similar in
2 the same format as Exhibit 89 and 90 just refer to the
3 Angela comic books and Angela trade paperbacks. I'm
4 wondering if you know the fact that we didn't get
5 equivalent documents for Spawn issue 9, Spawn issue 26
6 and the trade paperbacks incorporating those issues,
7 does that mean that that information is not on your
8 database?

9 A No, it's not. I can generate that for you.

10 Q Okay. If we could get the same documents, that would be
11 good, for Spawn 9, Spawn 26.

12 A Okay. Any others?

13 MR. KAHN: Trade paperback?

14 MR. SIMMONS: Yeah, trade
15 paperbacks. I'm sorry. I guess it would be
16 volume 2 and volume 6, which is also called Pathway
17 to Judgment. And while we're at it, this may be --
18 Mike, why don't we go back to Exhibit 59 for a
19 second, the first one, that sort of summary
20 document that you created.

21 THE WITNESS: Yes, sir. You want
22 them all?

23 MR. SIMMONS: That's what I'm
24 thinking, might be an easier way to get the
25 information that I requested from Mike in some of

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1 the document requests.

2 THE WITNESS: And that's fine,
3 because I have already printed all these off on all
4 the Spawn comics. I have a file now that has
5 hardcopy. It's just a matter of making
6 photocopies.

7 MR. SIMMONS: That seems like it
8 would be the easiest for all of us.

9 (Discussion off the record)

10 MR. SIMMONS: Actually, you mind if
11 we just take a couple of minutes here. There is a
12 new set of exhibits coming up, and I just want to
13 make sure that I have my act together before I
14 start asking you questions about them. We'll just
15 take five.

16 (A short recess is taken)

17 Q Looking at Exhibit 91, do you recognize this document at
18 all?

19 A Yes.

20 Q Okay. Can you tell me what it is.

21 A This is a document created by Image Comics in relation
22 to giving us the bottom line financial information for
23 Angela No. 1 comic.

24 Q Okay. As I'm looking in the lower left-hand corner, I
25 see it looks like it was created January 20th, 1995?

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1 A I would say that that's probably accurate.

2 Q So this is before your time with Todd McFarlane
3 Productions, right?

4 A Correct.

5 Q Do you receive similar reports currently from Image
6 Comics?

7 A Yes, we do.

8 Q Okay. So you have an understanding of the general
9 format this is laid out in?

10 A Yes, I do.

11 Q So maybe while you're not familiar with these specific
12 ones, maybe you can walk us through some of the terms
13 they use and the way this is set up.

14 A Certainly.

15 Q Unless I'm missing it, it doesn't look to me -- I'm
16 looking at page 1 of Exhibit 91.

17 A Yes.

18 Q I don't see the total number of units sold on this
19 document. Am I missing it?

20 A As far as units, it's not on here.

21 Q Okay.

22 A And there unfortunately is a consistency issue on that
23 because I have come across where they are on there, but
24 these ones obviously they're not.

25 Q Okay. The reports you receive currently, are the number

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1 of units usually listed on those documents?

2 A That's hard to say. Sometimes they are and sometimes
3 they're not.

4 Q Okay.

5 A What I look at is the cover price and the total invoice
6 and go from there if I need to come up with a number of
7 units.

8 Q Okay. That was going to be my next question. That's
9 how you would go about estimating what the total number
10 of units are?

11 A Yes, sir.

12 Q Okay. So in this case it would be -- I'm looking at the
13 third line from the top where it says cover price,
14 \$2.25. Do you see that?

15 A Yes.

16 Q So your understanding would be you take that number and
17 divide it into the number that's four lines below, I
18 think it says total invoiced, \$250,969.50?

19 A Yes.

20 Q You divide that 250,000 number by two and a quarter and
21 you would come up with what the total number of units
22 sold were?

23 A Yes.

24 Q What about -- is there another way to do this? I'm
25 wondering, looking at the unit cost line, do you see

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1 that four lines from the top?

2 A I think that's more involved in a cost of production.

3 Q Okay.

4 A But again I would verify that with Image Comics.

5 Q I was just wondering, if you took the unit cost number
6 and then there is in sort of the middle of the document
7 a total cost of goods sold, do you see that?

8 A Yes. And if you see after the words unit cost, it has
9 in parentheses cost of goods sold divided by quantity
10 paid for, and that must be some sort of an internal
11 calculation that they do.

12 Q Okay. I'm wondering, the cover price, I guess I'm just
13 looking at these numbers, I'm trying to figure out how
14 the distributor makes any money here. I guess I'm
15 wondering if the calculation I just proposed to you
16 actually makes sense, dividing the 250 by two and a
17 quarter, because it seems to me that I guess that
18 wouldn't leave any percentage for the distributor or the
19 retailer on the street. Does that make sense if we
20 divide the cover price, is presumably what the
21 distributor or the retailer sells the --

22 A Well, actually, you're right there.

23 Q I'm just sort of walking through it.

24 A That is an accurate way of going about getting that
25 number.

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1 Q So it would be an approximation, but it wouldn't give us
2 the exact number?

3 A Right. You just have to know what the actual markup is
4 between who they sell it to and the end retailer.

5 Q Do you have any idea what the markup is on these?

6 A No, I really don't.

7 Q Okay. Who at TMP, Todd McFarlane Productions or TMP
8 International would be responsible for receiving these,
9 currently be responsible for receiving these type of
10 reports from Image Comics, if you know?

11 A That's me.

12 Q Excuse me.

13 A That's me.

14 Q Oh, it is you. Okay. I'm going to turn to Exhibit 92.

15 A Yes.

16 Q It looks to me like it's -- well, it's kind of a
17 variation on what we were looking at in Exhibit 91 in
18 terms of format. Is this a document you received
19 from -- is it a document you believe was received from
20 Image Comics?

21 A Yes, it was. It was a document that I personally
22 received. If you see at the top, it gives you a
23 May 29th of 2002 date of it being faxed from Image
24 Comics to me.

25 Q Okay.

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1 A I requested the information.

2 Q Okay. And can you just explain to me generally what
3 information is contained on this document.

4 A Again it gives me all the financial information on the
5 income and expenses related to the income for the Angela
6 trade paperback. I made a note off to the right of
7 Angela Hunt No. 1, so at some point I must have, I don't
8 know, researched it enough to know that that was the
9 name of the trade paperback.

10 Q So this would be the first -- Angela Hunt No. 1, I don't
11 think that the term Angela Hunt was actually used on all
12 three versions of the trade paperback, so by Angela Hunt
13 No. 1, do you just mean the first version of the Angela
14 trade paperback? Does that make sense?

15 A Yeah, it could be the first printing. I mean, yeah, I
16 mean they refer to it only as the Angela trade
17 paperback.

18 Q Okay. We'll turn to Exhibit 93.

19 A Yes.

20 Q I'll ask you the same questions here. Is this a
21 document you received from Image Comics?

22 A Yes, it is.

23 Q And which publication is this referring to?

24 A This is referring to the Spawn Angela Hunt trade
25 paperback, and on the first line to the left on the

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1 report it mentions second printing.

2 Q Okay.

3 A Oh, it mentions it in several places, and it gives you
4 an example, if you see on that particular report, it
5 does seem to give some quantities as far as number of
6 units.

7 Q Yeah, do you know what -- what I'm seeing is about four
8 lines from the top. It says "Quantity paid for Ronalds
9 Printing"?

10 A Correct.

11 Q Is that what you're referring to?

12 A Correct.

13 Q Do you know what Ronalds Printing is?

14 A Ronalds Printing I believe is the same as the company
15 called Quebecor, which is the printing company that
16 prints all of our comics.

17 Q So do you have any understanding as to what the term
18 quantity paid for Ronalds Printing means?

19 A I would think that maybe Image Comics paid Ronalds
20 Printing and that is the amount, the quantity that they
21 paid for, and then it looks like these entries are an
22 attempt to give them an idea of what inventory that they
23 had on hand, so they started off with the amount that
24 Ronalds Printing actually printed and then the amount,
25 they deducted the amount that Diamond Comics took, then

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1 they deducted the amount of studio and Image comp to
2 come to a remaining inventory number.

3 Q Okay. So it looks like the total print run, based on
4 this document, would look like the total print run for
5 the second printing, at least as far as the information
6 contained on this document, was 7,500?

7 A Yes.

8 Q Okay. Why don't I turn you back to Exhibit 90, which
9 are the reports that you printed off from your database.

10 A Yes.

11 Q And I'm just looking, this is Exhibit 90, the report for
12 the Angela trade paperback, and down in the notes
13 section of it, about three-quarters of the way down the
14 page --

15 A Yes.

16 Q -- none of the numbers for the various printings
17 correspond with the 7,500 number listed on Exhibit 93.

18 A Yes.

19 Q Any idea why they don't correspond?

20 A I would have no idea what the source was for them coming
21 up with these print numbers on Exhibit No. 90 to be able
22 to relate to that. I mean it may be the Image
23 statement, Exhibit 93, is inaccurate, but I don't know
24 which one, one or the other, is inaccurate and I don't
25 know which one it is.

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1 Q Looking at Exhibit 93, the sixth printed line down, it
2 says "Less studio and image comps," do you know what
3 that term means?

4 A Well, I know what the term comps means. I don't know
5 what studio is in relation to the entire picture. I
6 would assume that Image keeps some comps within their
7 own inventory for archive purposes or whatever, but I
8 don't have a clue as to what studio is.

9 Q Okay.

10 A Unless it's studio color, which it could be.

11 Q I'm going to turn to -- I'm sorry, studio color did you
12 say?

13 A Yes.

14 Q What's studio color?

15 A If you look about halfway down that page under the title
16 of expenses, you'll see a notation for studio color, and
17 that is the company that does -- I don't know how
18 exactly you would term it, but they do a lot of
19 advertising and stuff like that in relation to the
20 comics.

21 Q Sure.

22 A So perhaps because they are so strongly involved in the
23 production of each of the comics that they get comps to
24 keep in their archives. That's how I would interpret
25 it.

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1 Q Okay. Turning to Exhibit 94, is Exhibit 94 a document
2 that was sent to you by Image Comics?

3 A Yes.

4 Q And what's your understanding of the information that
5 Exhibit 94 contains?

6 A Again financial information pertaining to a publication
7 that they titled Angela/Glory.

8 Q Okay. And turning to Exhibit 59, which is again that
9 summary document that you compiled --

10 A Correct.

11 Q -- Angela/Glory No. 1, which seems to be what's referred
12 to on Exhibit 94, if that is a separate publication,
13 that seems to be one of the publications that does not
14 appear on the summary you created on Exhibit 59.

15 A That is correct.

16 Q Okay. And I may have asked you this before, but again,
17 do you have any understanding as to why Angela/Glory
18 No. 1 might not appear on the summary you created in
19 Exhibit 59?

20 A Obviously it was not in -- well, not obviously, but it
21 must not have been in the database. It's possible that
22 we were not the ones that were receiving the statements
23 and the payments on this, so I would have had no other
24 way to run across it. I don't know who Glory is and I
25 don't know who the creator of Glory is, but I guess it's

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1 very possible that they would be the ones who received
2 this information originally.

3 Q I'll put you down towards the bottom of Exhibit 94, and
4 there is a line that says "First payment to creator."

5 A Yes.

6 Q Do you have an understanding as to who the creator is
7 that's being referred to in that line?

8 A No.

9 Q So it may or may not be Todd McFarlane Productions?

10 A That's very true.

11 Q We'll turn to Exhibit 95.

12 A Yes.

13 Q Can you tell me what Exhibit 95 is.

14 A This is an accounting provided by Image Comics in
15 relation to what they are terming Spawn Angela Hunt
16 trade paperback.

17 Q Okay. Do you -- let's see.

18 A Well, and actually, since they are attached to it,
19 relate to completely other publications, so that's just
20 the first sheet of Exhibit 95.

21 Q Yes. Thank you. Again are these documents that were
22 sent to you by Image Comics?

23 A Were they sent to me by Image Comics?

24 Q Yeah, I think some of the earlier exhibits, like
25 Exhibit 91 --

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1 A Oh, are you asking ones that I requested that were faxed
2 to me?

3 Q Correct. Exhibit 95, does that consist of documents
4 that you requested be sent to you?

5 A I may have requested them, but I don't see any
6 indication that they came to me as far as faxed in to me
7 and me turning around and providing them to you.

8 Q Okay.

9 A I have seen so many of these things that it's hard for
10 me to pick one out and say yes, I have seen it before.

11 Q Sure. On Exhibit 95, if you could turn to the page
12 marked TM 1682 --

13 A Yes.

14 Q -- do you see in the lower right-hand corner to the
15 right of the line first payment to creator?

16 A Yes.

17 Q There is some handwritten notes.

18 A Yes.

19 Q Any idea whose notes those are?

20 A Yes. Me.

21 Q Okay.

22 A That's my checkmarks and my initials on there.

23 Q Okay. What are they? What do those notes refer to?

24 A I think, if my memory serves me well, that I located
25 those actual payments as having been received. You're

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1 referring to the ones that are next to the line that
2 says first payment to creator?

3 Q Correct, at the bottom of the page.

4 A Right. So that if my memory serves me well, that's what
5 I'm sure that I was telling myself at the time was yes,
6 I verified that we received this check for \$5,952.89,
7 yes, we received this check for \$7,406.34.

8 Q Okay. And then turning to the next page, TM 1683,
9 similar checkmark and a number two down at the bottom of
10 the page?

11 A Yes.

12 Q Is that also your handwriting?

13 A Yes, it is.

14 Q The same explanation?

15 A Yes. Off the top of my head, I don't remember what my
16 distinguishing between number one and number two, unless
17 I was tracking down printings, like number one may refer
18 to it being the first print and number two being the
19 second print, but again I'm going by memory.

20 Q And what is the -- what's the event you're remembering,
21 were these notations you made, was this something you
22 were doing in preparation for litigation, and if it is,
23 I don't want to know the substance of it, but were these
24 notations you made for just some purpose totally
25 unrelated to this litigation?

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1 A No, it was related to this litigation.

2 Q Okay.

3 A At some point I was attempting to actually tie down
4 these numbers, but it ended up that I wasn't able to do
5 that all the way through all of these documents, only
6 because of time constraints.

7 Q Okay. Turning to TM 1684, the checkmarks and the star
8 at the bottom right of that page, are those also your
9 notes?

10 A Yes, they are.

11 Q Part of the same process you were going through?

12 A Correct. The checkmarks, I believe, if my memory serves
13 me right, if I would take those numbers and total them
14 up, they're going to total that one number of \$173,468
15 that has the star next to it.

16 Q Turning to TM 1685, the handwritten notes in the bottom
17 right-hand corner of that page --

18 A Those are mine.

19 Q Okay. And what do they refer to?

20 A April of 1995, I can't remember exactly, I would imagine
21 that they are payments received, but I would have to get
22 back into it again to know that. This statement for
23 Angela No. 1, the date on it is 1994, so I may have gone
24 a little bit further and made myself some notes as to
25 other monies that were received after that date.

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1 Q If you could just quickly flip through the remaining
2 pages of the exhibit, again you'll see handwriting in
3 the bottom right-hand corner of each page.

4 A Those are mine.

5 Q That's what I figured. Turn to Exhibit 96.

6 A Yes.

7 Q Do you recognize Exhibit 96?

8 A No. It's foreign.

9 Q Is this a document that you -- would you have any idea
10 when this document was created?

11 A No, I really don't. I have never seen it before until
12 you provided it to me. I can only assume from the
13 little bit that I read here that it's some sort of a
14 royalty payment and it's from a Japanese company.

15 Q Have you ever seen royalty reports similar to this one
16 since you have been with TMP International?

17 A No, I have not.

18 Q Do you have any idea whose handwriting is in the middle
19 of the page?

20 A No, I don't. I don't recognize that handwriting.

21 Q All of Exhibit 96 in general appears to deal with
22 foreign sales of various Spawn publications. And again,
23 we're just trying to figure out how we determine what
24 the foreign, what the total volume of foreign sales is
25 of all the publications that are at issue in this

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1 lawsuit, presumably all the publications that are listed
2 on Exhibit 59. Are you aware of documents that would --
3 documents or data on a computer somewhere that would
4 tell us what the foreign sales were of all the various
5 Spawn publications at issue in this suit?

6 A Well, Exhibit No. 97 is a document that I prepared based
7 on a database that has been maintained here at Todd
8 McFarlane that the licensing people were maintaining. I
9 can't verify that the dollar amounts that are on that
10 were what was actually received and deposited into any
11 bank account, but I have to assume that they maintained
12 the level of accuracy.

13 Q Okay. Are there any -- can you explain to me how you
14 receive royalty payments, you being TMP International or
15 TMP, receive royalty payments from foreign distributors
16 or whatever foreign entities you may be selling Spawn
17 publications to.

18 A You mean the method that we receive it?

19 Q Yeah, I'm just trying to understand the process by which
20 the sales are made and then the money comes back to TMP
21 or TMP International.

22 A Well, at the time a contract is signed, then they,
23 meaning the publisher that is purchasing the rights to
24 publish our work, pay in advance against future sales.
25 Most of the time at least in these instances their sales

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1 have not exceeded the amounts in order to receive
2 additional monies based on quantities sold, at least not
3 compared to toys, and that's where my level of reference
4 is. It's supposed to be on a quarterly basis. There
5 isn't a whole lot of consistency to that, but there is
6 communication with these companies in order to attempt
7 to keep them reporting on a regular basis.

8 Q Okay. And so today is the actual printing and
9 distributing of the comic books or trade paperbacks,
10 does that actually take place in the foreign country
11 then?

12 A Yes, sir.

13 Q So the comic books that are sold abroad, they never pass
14 through TMP's hands?

15 A That is correct. We provide the publisher with a CD
16 that contains all the information that they need in
17 order to reproduce the comic in their country, and so as
18 far as the quantities and dollars that they receive and
19 sales that they make, we have to rely on information
20 that they provide to us.

21 Q Okay. And is there a standard format in which they
22 provide that information to you?

23 A Unfortunately, not. That is something that I would like
24 to see take place only for my own peace of mind. They
25 all report in their own little way.

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1 Q Okay. And so --

2 A And I have no idea how many dollars are in one yen, so I
3 mean -- and that's on this Exhibit 96, it's reported in
4 yens.

5 Q Okay. And then on Exhibit 97, just so I make sure I
6 understand Exhibit 97, what you think Exhibit 97 is, is
7 it your understanding Exhibit 97 should include, should
8 be a summary of all the information that you have
9 received from all these foreign publishers relating to
10 what they have published in their various countries?

11 A Yes.

12 Q So all these -- you said that each foreign publisher
13 submits information in different forms.

14 A Yes.

15 Q Exhibit 97, it's your understanding that Exhibit 97 is
16 an effort to sort of pull all that information together
17 and put it together in one standard form?

18 A That was my attempt, yes.

19 Q Okay. But this was something you compiled?

20 A Yes, it is. The biggest issue that I have on
21 Exhibit No. 97 is that there are several contracts that
22 were entered into that include a lot more than just one
23 comic. It will include several different issues of
24 several different comics. So coming down to, okay, how
25 much of the income that we received on this contract

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1 truly relates to this specific comic, I simplified it.
2 I simply looked at, okay, there is eight different
3 comics here. Therefore, I'm going to take the income
4 that was received and divide it by eight. And I don't
5 think that that is an accurate way of doing it.

6 Q Okay. It doesn't apportion them out, doesn't apportion
7 the revenue out to each specific issue?

8 A Exactly. The number of pages that may be relating, the
9 popularity of the comic, there could be several issues
10 that enter into the picture that may make this portion
11 of this contract more valuable than this other portion
12 of the contract. In other words, if you look at like
13 Titan Publishing Group on Exhibit 97, which is the third
14 from the bottom --

15 Q Yeah.

16 A -- and you'll see over into the middle of the page where
17 I have listed comments, you can see that there is
18 several different comics that were involved in this one
19 contract. The first one says Creation & Evolution, 120
20 pages each, the next one we have Revelation and
21 Escalation, 120, then you get down to Confrontation and
22 Angela, Confrontation was 120 but Angela was only 72, so
23 how does one then come down to the bottom line, how much
24 of the royalties that were received relates to Angela.
25 Do you understand what I'm saying?

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1 Q Yes, I think do.

2 A Okay.

3 Q And you're saying based on the information that these
4 foreign publishers give you, that's just not a
5 determination you can make?

6 A No, because I would have to then be in touch more with
7 the publishers themselves to find out, okay, what was
8 the cover price, how many of this one were published,
9 how many -- you know, I would need a whole lot more
10 information than what I have.

11 Q Sure, and we won't ask you for that at this time.

12 A Thank you.

13 Q I think you said this is a spreadsheet or database that
14 you went out of your way to compile this separately, is
15 that correct?

16 A That's correct.

17 Q So can you run the same information for domestic sales
18 or is that --

19 A No, this is information that is strictly for
20 international because we're the ones that are handling
21 international. We don't handle domestic. Image Comics
22 does.

23 Q Okay.

24 A I mean I can request the information from them, but I
25 don't have access to the information myself.

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1 Q Okay. No, we don't need that at this point. And what's
2 the creation date on this? I'm sorry, you may have told
3 me that. When did you create this document?

4 A Oh, I don't know, a couple months ago.

5 Q That's all, just a general time frame.

6 A I see that I follow along and didn't put a date on the
7 document. It's just in the last two to three months.

8 Q So I'm just trying to figure out what sales might be
9 missing, so there could be some smattering of recent
10 sales that aren't on here?

11 A It's possible. But like I said before, I'm the one who
12 gets royalty checks in and I don't remember seeing
13 payments on any of these older issues, but that's not to
14 say that they aren't there, you know. I would have to
15 go through all the statements that I have received to
16 know that, but the information is available.

17 Q And Exhibit 97 is just based on whatever documents you
18 had available in the files at TMP or TMP International?

19 A Right. I compiled this information based on a database
20 that was put together by people in our licensing
21 department, not people in our accounting department, and
22 as we all know, accountants are a whole breed within
23 themselves. So I can't sit here and say that this
24 information as far as the dollars is real accurate. I
25 have to assume that they were doing their job and

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1 keeping these things updated and accurate. But I did
2 not verify that yes, this is the money that we put into
3 the bank.

4 Q Okay. You said you pulled this off of a database. So
5 this isn't -- am I correct that this then isn't based on
6 you looking at individual printed out letters or reports
7 that you received from the foreign publishers?

8 A That is correct.

9 Q Okay.

10 A And again we're going back into time frames where I'm
11 not sure that those papers still exist.

12 Q Some of them still do exist, though?

13 A I'm sure that there are.

14 Q Okay.

15 A But they are located in a warehouse that's not air
16 conditioned.

17 Q Okay.

18 A If you catch my drift.

19 Q Yeah. Yeah. In Arizona.

20 A Yes.

21 Q Yeah. Okay. Let's turn to Exhibit 98. Do you
22 recognize Exhibit 98?

23 A Only from you providing it to me. I have absolutely no
24 idea what it is.

25 Q Okay.

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1 A And what the purpose of anybody putting these numbers
2 together, I just don't know.

3 Q Okay. That's fine. We'll turn to Exhibit 99. Have you
4 seen Exhibit 99 before?

5 A Not before you provided it to me.

6 Q Okay. We'll move ahead to Exhibit 100.

7 A Okay.

8 Q Do you recognize Exhibit 100?

9 A I have seen this copy before, yes.

10 Q Okay. Do you have any understanding as to what it is?

11 A My understanding is that it's a payment to Neil Gaiman
12 as a bonus for foreign sales of -- I don't know if it's
13 toys or if it's comics.

14 Q Do you have any idea who generated the first page of
15 Exhibit 100?

16 A No, I don't. Well, the first page of Exhibit 100 is
17 simply a photocopy of a check.

18 Q Okay.

19 A The second page I do not recognize the handwriting and I
20 have absolutely no idea who generated.

21 Q That was my second question. Yeah. Okay. Well, turn
22 to Exhibit 101.

23 A Yes. We're back to Image Comics.

24 Q Yeah. Do you have any understanding of what Exhibit 101
25 is?

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1 A Yeah, it's an accounting prepared by Image Comics for
2 the production and distribution of a poster that they
3 termed Angela Spawn Heaven.

4 Q Do you know, is that a poster that is still in
5 production?

6 A Not that I'm aware of. I have never seen any posters
7 still in production since I have been here.

8 Q Did you talk to anybody, any of your co-workers at TMP
9 International or Todd McFarlane Productions about the
10 substance of Exhibit 101?

11 A I'm not sure I'm understanding what you're asking me.

12 Q Well, this is a document, looks like it was created at a
13 time before you were on board at Todd McFarlane
14 Productions or TMP International, and I'm just wondering
15 when you received this document from Image, did you go
16 to any of your co-workers at Todd McFarlane Productions
17 or TMP International and say, hey, do you understand
18 what Exhibit 101 is, can you explain some of the various
19 lines here.

20 A No, because to me I do understand the exhibit, because
21 it's the same as the statements that we get from the
22 comics, I mean, you know, in general it's the same.

23 Q Same general format, yeah.

24 A And I see also that this was one that Image had provided
25 to me. I see the line at the top that shows they faxed

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1 it. I did not get samples of these posters, but I'm
2 sure that I would be able to if it was requested.

3 Q Turn to Exhibit 102.

4 A Yes.

5 Q Am I correct that this is essentially just a variation
6 of Exhibit 101 except for the Angela Pray for the Hunt
7 poster?

8 A My understanding is that we're looking at two different
9 posters.

10 Q That's what I mean.

11 A But yes, it's the same type of document giving financial
12 information on their income and their expenses relating
13 to the production and distribution of this particular
14 poster.

15 Q Okay. And it looks like this report ends in the year
16 2000. Are you aware of this particular poster still
17 being sold or still being in production?

18 A In the year that I have been here, I have not seen any
19 income come in relating to any posters.

20 Q Turning to Exhibit 103, again this is the same format as
21 the previous two exhibits. This one just refers to
22 Angela poster. Do you have any understanding of whether
23 this is yet a third poster or is this a subset of one of
24 the two previous exhibits we looked at?

25 A Well, I would think because of the time, the dates that

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1 are noted across the top as to the shipping dates, that
2 this is probably the first one, only because you're
3 going back into 1994 whereas the other ones were 1999,
4 2000 and '96.

5 Q So that's a different time frame, and you assume it's --
6 it's a different time frame certainly, but you assume
7 it's also a different poster?

8 A That would be my assumption. Again I would -- to sit
9 and swear to that, I would want to see a sample of each
10 one of these posters.

11 Q Sure. And then Exhibits 104 and 105, same thing, they
12 look like just a variation of the same format as the
13 earlier exhibits, just these two are relating to
14 different posters this time?

15 A Right. My interpretation would be the first poster
16 would be Exhibit 103, the second one is Exhibit 104 and
17 then the other two that we noted earlier, I guess it was
18 101 and 102, those probably came after. I mean that's
19 just from the dates of these statements, that's how I
20 would interpret it.

21 Q And again Exhibits 104 and 105, your understanding is
22 these were given to TMP by Image Comics?

23 A Correct.

24 Q Turning to Exhibit 106, do you recognize Exhibit 106?

25 A Wait a second. I have to get to that pile.

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1 Q Sure.

2 A Here it is. Yes, I do.

3 Q Okay. Can you tell me what it is.

4 A This is a report that I printed out of a software
5 program called Quicken where I put in the parameters,
6 tell me everything that has been processed on New Line
7 Cinema. So I don't know why West Linn Travel Cruise
8 popped up. Maybe there was some expenses that were
9 referred to in the memo section so that's why it picked
10 it up in this report.

11 Q And I think this is the first document we have seen with
12 information on the Quicken computer program.

13 A Right.

14 Q Does TMP or TMP International still use Quicken to
15 maintain any of its financial information?

16 A No. Emphatically, no.

17 Q Do you have any understanding as to when they stopped
18 using Quicken?

19 A Quicken was used only for Todd McFarlane Productions,
20 and if I remember, and again I'm going off of memory
21 here, it was right in the area of early to mid 1999 when
22 they set Todd McFarlane Productions up in the current
23 software that we use, which is Great Plains.

24 Q Okay.

25 A Todd McFarlane Productions was never set up in the first

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1 Great Plains software.

2 Q So do you have an understanding -- well, first of all, I
3 guess you're no longer using Quicken, correct?

4 A That's correct.

5 Q So when you pulled up this information, you created the
6 report in Exhibit 106, correct?

7 A Correct. Yes.

8 Q You pulled that up, was that just from a database that
9 you had in storage somewhere or --

10 A Yes.

11 Q So do you have an understanding of what other
12 information is on that Quicken program or Quicken
13 database?

14 A Yeah, there is a lot of information in there and there
15 is a lot of information that is missing. I went through
16 a lot just trying to locate this program, trying to
17 locate the passwords to get into the program, and
18 whether or not the information that is in it is
19 complete, I think it's accurate what's there, but
20 whether it's complete, I would have to be able to access
21 hardcopy information to verify that. Again we have
22 boxes and boxes and boxes in our warehouse, so I mean
23 we're talking a huge project.

24 Q Sure. But for example, theoretically should all the
25 payments made to TMP by Image Comics during the time

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1 period that they were using the Quicken database, should
2 they be in the Quicken database?

3 A They should be, yes. But again, I can't verify that it
4 is as complete as I would hope that it is. There may be
5 stuff missing, and the only way that I would be able to
6 verify that is to locate the hardcopy information.

7 Q And we won't ask you to do that today.

8 A If you could just wait a couple of months when it starts
9 cooling off here a little bit. Otherwise it will just
10 cook me.

11 MR. KAHN: Although, on the comic
12 statements, the final lines talk about payments to
13 creators. Presumably, Julaine, correct me if I'm
14 wrong, if they show a payment to creator in a
15 certain amount, when is that payment being made, at
16 the time that the statement is being sent?

17 THE WITNESS: Yes. Correct.

18 MR. KAHN: So whatever the creators'
19 statements show would total the amount of
20 payments to Todd McFarlane Productions.

21 THE WITNESS: I should be able to
22 take anything that is labeled at the bottom of
23 Image statements as payments to creators, I should
24 be able to tie that down to a specific payment that
25 was received by Todd McFarlane Productions and in

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1 some of the documents that are contained here where
2 I have made those checkmarks and stuff like that, I
3 did verify that, that those payments were received.
4 I didn't for everything and I certainly haven't on
5 all the Spawns. I mean we're talking a major
6 project here, not one that I am telling you I
7 wouldn't do --

8 MR. KAHN: Right, but no, I'm just
9 really -- off the record.

10 (Discussion off the record)

11 Q And again we're referring to Exhibit 106 here,
12 Ms. Claybaugh, would revenue received for action figures
13 be entered in the Quicken database?

14 A I can't answer that. What I'm looking at here, only
15 because they are large dollars and they are even
16 amounts, it certainly would not cover any royalties for
17 any sales of any product that New Line might have paid
18 to us. This looks like it directly relates to contract
19 rights and things like that. So I don't know. I would
20 have to research that further.

21 Q What about more broadly, for example, royalty payments
22 from TMP International to Todd McFarlane Productions for
23 action figures sold by TMP International, have you ever
24 seen those royalty payments show up on the Quicken
25 database?

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1 A The only royalty payments -- oh, what you're asking me
2 is if I have seen any income on production side as far
3 as entries that would have been made out of Todd
4 McFarlane International or any of those companies?

5 Q Well, your understanding is that TMP International pays
6 a royalty to Todd McFarlane Productions for the action
7 figures it sells, correct?

8 A Well, payment is a very broad term here. What actually
9 takes place is internal entries that are accounted for
10 on both sides. I cannot sit here and tell you that that
11 was taking place back in this time frame. I know that
12 it takes place now. I know that it was taking place for
13 a couple of years before I took over. But back in 1996
14 and 1997 I don't know if they would sit down and write a
15 check that was then deposited into Todd McFarlane
16 Productions or if it was simply a paper transaction.

17 Q Okay. And yeah, I think you have answered my question.
18 So it may or may not, some of these payments may or may
19 not have ended up in the Quicken database, you just
20 don't know, correct?

21 A Correct. If it was royalties received from New Line
22 Cinema for royalties that related to the contract that
23 we're referring to on Spawn, then my assumption would be
24 that yes, it should show up in the Quicken because that
25 would be production.

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1 Q Okay. Why don't we turn to Exhibit 107.

2 A Okay.

3 Q Do you recognize Exhibit 107?

4 A Only from you providing it to me.

5 Q Okay. Do you recognize the format of Exhibit 107?

6 A You know, I don't. It doesn't look like anything that
7 is printed out of any current software that I have been
8 using since I have been here. But it does look like
9 something that was generated somewhere. It's not just
10 like an Excel spreadsheet of any kind, so I really don't
11 know what the source of this document is.

12 Q And my accounting consultant here is assuring me that
13 it's an earlier version of Quicken and I'll take his
14 word on that.

15 A And hopefully I'll never have to know that because I do
16 not like Quicken. Can you tell?

17 Q Yes. Why don't we turn to Exhibit 108.

18 A Okay.

19 Q And do you recognize Exhibit 108?

20 A Not until you provided it to me. I don't recognize the
21 handwriting or anything. It's obviously a handwritten
22 ledger of some sort.

23 Q Are you aware of ledgers of this sort being maintained
24 by Todd McFarlane Productions or TMP International?

25 A I vaguely remember in trying to locate some documents in

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1 regards to this Gaiman issue coming across some
2 documents that were in this time frame that were
3 handwritten, and this probably is one of those, but I
4 would have to verify that. I recognize the dollar
5 amount. I recognize everything else. I have seen a
6 copy of this check.

7 Q Okay. We'll turn to Exhibit 109.

8 A Okay.

9 Q Do you recognize Exhibit 109?

10 A No, I don't, not until you provided it to me.

11 Q Do you recognize the format of the document at all?

12 A It looks like an Excel spreadsheet to me.

13 Q Okay.

14 A And actually it's got Image Comics on it, so it looks
15 like something generated by Image.

16 Q Turn to Exhibit 110.

17 A Yes.

18 Q Again, do you recognize Exhibit 110?

19 A Yes.

20 Q Is this a document you created?

21 A Yes.

22 Q Okay. This is a document created from the Quicken
23 database that we referred to earlier?

24 A Correct. I went in and said give me any information
25 that you have in reference to Neil Gaiman.

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1 Q Okay. So any payments or any monetary transactions one
2 way or another to Neil Gaiman that were entered into the
3 Quicken database --

4 A Yes.

5 Q -- should have shown up?

6 A Exactly.

7 Q The next set of exhibits, the last ones are these TMP
8 International auditors' reports.

9 A Yes.

10 Q Just generally, I guess there is some McFarlane Toy
11 reports in here as well. Are you familiar with these
12 reports at all or can you tell me what your level of
13 knowledge is of these reports.

14 A Only that I located an internal file that contained
15 these. You had requested copies of financial
16 statements. I made the copies. I cannot verify that
17 the information that's contained in it -- I mean I would
18 have to assume that because there is a certified public
19 accountant, but these days that doesn't mean much, but
20 yeah, I made copies of these reports from a file that's
21 located here.

22 MR. SIMMONS: If we take five
23 minutes here, I may be just about done. I just
24 want to see if there is anything else I want to
25 cover.

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1 (A short recess is taken)

2 Q Just a couple of questions relating to these annual
3 reports, and I understand that you have very limited
4 knowledge. Looking at Exhibit 111, if you turn to
5 page 6 of Exhibit 111, it's Bates No. TM 1697, you see
6 at the bottom of the page there is a reference, it says
7 "The company has a note receivable from Stabur
8 Corporation."

9 A Stabur.

10 Q Stabur. Any idea, do you know what Stabur Corporation
11 is?

12 A I have seen the name before, but I couldn't tell you
13 without looking deeper into it. I really don't know.

14 Q Do you have any sense of whether Stabur Corporation is a
15 company that TMP International or Todd McFarlane
16 Productions has any sort of current relationship with?

17 A No, we do not.

18 Q Okay. And then bear with me for just one second here.
19 If you turn to Exhibit 117 and then you turn to page 13
20 of that exhibit, which is TM 1813 --

21 A I'm sorry, TM what?

22 Q 1813.

23 A Okay. Yes.

24 Q It contains a bunch of columns listing sources of
25 revenue and expenses for various McFarlane related

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1 corporations, is that fair to say?

2 A Yes.

3 Q I'm seeing some columns in here for TMP Asia, Ltd.?

4 A Yes.

5 Q McFarlane Europe B.V.?

6 A Yes.

7 Q McFarlane Global Operations?

8 A Yes.

9 Q I'm just wondering, in the other information that you
10 have provided to us, specifically the reports that you
11 generated, for example, Exhibit 67, 68, the exhibits in
12 that range, I didn't see any reports for TMP Asia or
13 McFarlane Europe. Is there a reason for that?

14 A Because there were no sales that were generated through
15 those companies that like for TMP Asia, we had to have
16 an office in Asia in order to do some sort of specific
17 types of transactions in that company, so there weren't
18 actual sales of toys or sales of comics that were
19 produced through those companies.

20 Q Do those companies have any involvement in the sale of
21 toys or comics?

22 A No, as far as I know.

23 Q As far as you know, yes.

24 A Yeah.

25 Q Turning to page 15 of Exhibit -- I think it's 117,

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1 right?

2 A Yes.

3 Q Yeah, Exhibit 117, it's Bates No. 1815, looking at the
4 column for TMP Asia, gross sales, it lists \$1.9 million
5 in gross sales.

6 A Yes.

7 Q Do you have any knowledge what they're selling that's
8 valued at \$1.9 million?

9 A I don't. I really don't. I would have to research that
10 to know.

11 Q Okay. But as far as you know, it's nothing to do with
12 action figures or toys or comics or anything like that?

13 A As far as I know.

14 Q Okay.

15 A But again this is before my time, so I would have to
16 look into that.

17 Q Okay. Turning to Exhibit 118, Bates No. 1780 --

18 A Yes.

19 Q If you flip back to the last page of that exhibit, this
20 is -- well, is this actually, this report, is this
21 during your time or is this before your time as well?

22 A It's still before my time.

23 Q Still before your time, isn't it. Yeah. Okay. I think
24 that's it on the financial reports. I guess the only
25 other thing I want to try to get a handle on is exactly

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1 what we're missing in terms of sales information,
2 particularly, primarily for the action figures I think.

3 A Okay.

4 Q The reports that you produced for us on your new -- is
5 it the Great Plains software?

6 A Correct.

7 Q Again that begins sometime, the information picks up
8 somewhere in 1999 or so, is that right?

9 A That's correct.

10 Q Okay. And then I think what we have seen in terms of
11 documents are financial information created before you
12 started that runs up until about 1997 and it looks to me
13 like there is a gap starting in 1997 and then running
14 through the point in 1999 when the reports you created
15 pick up.

16 A Yes.

17 Q Is that a fair statement?

18 A Yes.

19 Q And so I think your attorney was telling me that there
20 is another computer program out there somewhere that
21 probably has most of that information in it and you're
22 trying to get access to it now, is that it?

23 A Yes.

24 Q What's the status of those recovery efforts?

25 A I have had the -- what it entailed is that we had to

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1 contact Great Plains. They had to come in here and
2 install a very old version, a DOS version of
3 Great Plains on-line computer. At that point we were
4 then able to upload a disk that I had found that just
5 says old Great Plains data on it. And then at that
6 point we had to try and come up with passwords to get
7 into it. It has just been a science project.

8 I am able to now get into it and access
9 information. Unfortunately, we did not locate all
10 passwords, so I can't get into the utilities to be able
11 to actually print reports directly from the program. I
12 have to export them from Great Plains into Excel in
13 order to be able to print anything. But that's the
14 point I'm at.

15 Q Okay. Sorry about that.

16 A Believe me, you're not the only one.

17 Q So any idea how long it's going to take to gather that
18 information? I guess, first of all, from what you have
19 seen so far, does the program seem to contain all the
20 missing information that we would want, I mean sales
21 information on action figures?

22 A In the few things that I have actually gone in and
23 reviewed on screen, I can run off the report that is
24 similar to ones that I gave you that are called sales
25 document analysis report.

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1 Q Okay.

2 A Yeah, which is the ones that don't give the date and
3 don't give the invoice numbers. I have not been able to
4 even locate in the program the ability to run the other
5 report that's titled inventory sales report that gives
6 me complete detail of each and every sale.

7 Q So if you ran us the reports that you can run on that
8 program that don't have dates, they aren't necessarily
9 going to tell us whether the sales reflected there
10 correspond to the time period where we have a gap, is
11 that right?

12 A No, but there is ways of backing into that by using the
13 program. Like what I did was I simply went in there, I
14 told it, okay, I want you to tell me on item No. 10110
15 all sales that relate to that item. I can get a report
16 out of that. I can then turn around and go, okay, I
17 want you to tell me the same item but from this time to
18 this time and keep doing that until I narrow things
19 down. It's a long, drawn-out process, but it is the
20 only way I see in being able to tie down what the actual
21 time frame of these sales is.

22 Q Okay.

23 A Do you understand what I'm saying?

24 Q Yeah, I think it makes sense.

25 A Yeah, so for each and every item I can go in and say

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1 give me all the sales and it's going to tell me
2 everything. It's not going to give me any specific
3 dates, so the only way for me to find those dates is go
4 in there and put that in as the parameters of the
5 report.

6 MR. SIMMONS: All right. Well,
7 Mike, you and I can talk about that.

8 MR. KAHN: Right, we can talk about
9 that I think right after this deposition ends
10 because I think trying to monitor Julaine's
11 progress with this, it would be nice if we could
12 figure out, among other things, who created this
13 disk, and maybe to add something obviously Julaine
14 won't know, it would have been created up in
15 Michigan years ago. But if we can figure out who
16 created it, we can try and verify some numbers, we
17 can in theory at least between the reports Julaine
18 ran and some reports we can generate from this, if
19 it's accurate, come up with a full picture on
20 different toys.

21 THE WITNESS: We'll have three
22 different sources basically of information. We're
23 going to have the old Quicken program, we're going
24 to have the first Great Plains and then our current
25 Great Plains.

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1 MR. KAHN: Although for toys is out
2 of the -- at least for toys sales it ought to be
3 the two programs.

4 MR. KAHN: Correct.

5 THE WITNESS: Because there would
6 be no toys sales for production.

7 MR. SIMMONS: I didn't follow that.

8 MR. KAHN: We can talk about it
9 after we end this.

10 MR. SIMMONS: I mean can you give me
11 sort of a rough estimate of what the earliest is
12 you would likely have those reports and what the
13 latest is?

14 MR. KAHN: Let's you and I talk
15 about that and then I'll talk to Julaine because we
16 may simply want to have some computer person run
17 these things.

18 (5:15 p.m.)

19
20
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25

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1 STATE OF WISCONSIN

COUNTY OF DANE

2 I, ELIZABETH J. KERNEN, a Notary Public commissioned
3 and qualified in and for the State of Wisconsin, do hereby
4 certify that, there came before me on the 17th day of
5 July, 2002, at the offices of Foley & Lardner, 150 East
6 Gilman Street, Madison, Wisconsin, the following named
7 person, to wit: JULAINE CLAYBAUGH, who was by me duly
8 sworn to testify to the truth and nothing but the truth of
9 knowledge touching and concerning the matters in
10 controversy in this cause; that the witness was thereupon
11 carefully examined upon oath; that said examination was
12 taken in shorthand by me and reduced to writing using
13 computer-aided transcription; that said deposition is a
14 true record of the testimony given by the witness; and
15 reading and signing of deposition by said witness were
16 requested. I further certify that I am neither attorney or
17 counsel for, nor related to or employed by, any of the
18 parties to the action in which this deposition is taken,
19 and further that I am not a relative or employee of any
20 attorney or counsel employed by the parties or financially
21 interested in the action. In witness whereof I have
22 hereunto set my hand and affixed my notarial seal
23 July 28, 2002. My commission expires 1/26/04.

24 
25 Notary Public, State of Wisconsin